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United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 15,833.

CIVIL.

FRED W. STOVER,
Appellant,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

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ABSTRACT OF PLEADINGS, EVIDENCE AND PROCEEDINGS.

(Plaintiff's Application for Citation for Contempt of Court.)

(Filed in United States District Court on September 10, 1956.)

Comes now the Farmers' Educational and Cooperative Union of America, plaintiff in the above entitled cause, and makes application for citation for contempt of Court of Fred W. Stover for willful violation of the injunction issued as a part of the final decree in this cause entered herein on or about June 13, 1956, and in support thereof shows to the Court the following matters, to-wit:

1. On or about June 13, 1956, the Court filed herein its Findings of Fact, Conclusions of Law, and Order for Judgment, pursuant to which judgment was simultaneously entered in favor of the plaintiff, Farmers' Educational and Cooperative Union of America, and against the defendants, wherein said defendants, including the defendant, Fred W. Stover, were permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, the sale of insurance, and the serv-

icing of farm equipment, and from in any way, directly or indirectly, attempting to compete with the plaintiff in its use of said trade-marks.

2. On or about July 11, 1956, the defendants, including the defendant, Fred W. Stover, filed in this cause a notice of appeal to the United States Court of Appeals for the Eighth Circuit, but no application was made for any stay of the operation of the injunction and, notwithstanding said appeal, said injunction remains and still is in full force and effect.

3. Subsequent to the entry of decree in this cause, the defendant and appellant, Fred W. Stover, in his capacity as President of the Iowa Union Farmer Association, one of the defendants herein, supervised the publication and distribution of a newspaper entitled U. S. Farm Union News (formerly Iowa Union Farmer), wherein he solicited contributions for the Iowa Union Farmer Association, 517 Keo Way, Des Moines 9, Iowa, and published various articles therein which demonstrated a willful and deliberate defiance of the decree of this Court and a contumacious attitude toward this Court. In speaking of the trial of this cause, one article states as follows:

> "Judge Roy Harper of Missouri, a Truman appointee and a friend of Charlie Brannan was assigned to hear the case. We knew nothing about the case before—about the pre-trial conference and the discussions that had been held before Judge Riley. It seems that he paid no attention to our answer, our briefs and arguments or testimony. His excuses seemed to be that we had conceded the legality of the charter revocation, and therefore all the long record of N. F. U. interference in I. F. U. affairs had no bearing."

The use of the name U. S. Farm Union News (formerly Iowa Union Farmer) of said publication is in direct violation and defiance of the injunction issued herein as aforesaid. The solicitation of funds for the Iowa Union Farmer Association is in direct violation and defiance of the decree herein. The various statements contained in the publication of said U. S. Farm Union News clearly demonstrate

that the defendant, Fred W. Stover, has no intention of complying with the decree entered herein and is deliberately acting in contempt thereof. The headquarters of the defendant, Iowa Farmers Union, which is likewise the headquarters of the Iowa Union Farmer Association, at 517 Keo Way, Des Moines, Iowa, displays a large sign, Iowa Farmers Union, in direct violation of the decree herein. The defendant, Fred W. Stover, has continued to use stationery with the name, Iowa Farmers Union, thereon, since the entry of the decree herein. He has conducted a campaign for the solicitation of members of the Iowa Farmers Union under representation that in a short space of time it will be reinstated as the Iowa Division of the plaintiff herein and the general tenor of the remarks contained in the U. S. Farm Union News demonstrates a deliberate and willful contumacious attitude to ignore the injunction issued herein and to combat the efforts of the plaintiff to reestablish its Iowa Division, the charter for which was revoked in 1954, and which revocation was conceded of record in this cause at the trial herein. In addition to the foregoing, the defendant, Fred W. Stover, is attempting to collect funds which are the property of the Iowa Division of the plaintiff and do not belong to the said Fred W. Stover or any of the defendants in this cause, all in violation of the injunction contained in the decree entered of record in this cause.

Wherefore, the Farmers' Educational and Cooperative Union of America, plaintiff herein, prays that this Court issue a citation directed to the United States Marshal, Southern District of Iowa, commanding him to attach the person of Fred W. Stover forthwith and bring him before this Court at such time as the Court may fix to show cause why he should not be held in contempt of this Court and punished therefor and that plaintiff have such other and further relief as may be just and equitable in the premises.

Signed and verified by counsel.

(Amendment to Application for Citation.)

(Filed in United States District Court on December 10, 1956.)

Comes Now the Farmers' Educational and Cooperative Union of America, plaintiff in the above entitled cause, and hereby amends its Application for Citation for Contempt of Court of Fred W. Stover previously filed herein by adding thereto Paragraphs 4 and 5 as follows:

4. That the publication and distribution of a newspaper entitled U. S. Farm Union News (formerly Iowa Union Farmer), referred to in Paragraph 3 hereof, was denominated the May-June 1956 issue of said newspaper. That thereafter and subsequent to the entry of decree in this cause, the defendant and appellant, Fred W. Stover, in his capacity as president of the Iowa Union Farmer Association, one of the defendants herein, supervised the publication and distribution of a further and subsequent issue of said newspaper referred to in Paragraph 3 hereof, which was denominated the July-August 1956 issue of said U. S. Farm Union News, by which newspaper defendant, Fred W. Stover, solicited contributions for the Iowa Union Farmer Association, published various articles which demonstrated a willful and deliberate defiance of the decree of this court and a contumacious attitude toward this court. The use of the name U. S. Farm Union News (formerly Iowa Union Farmer) of said publication is in direct violation and defiance of the injunction issued herein as aforesaid. The solicitation of funds for the Iowa Union Farmer Association is in direct violation and defiance of the decree herein. The various statements contained in said publications of said U. S. Farm Union News clearly demonstrates that the defendant, Fred W. Stover, has no intention of complying with the decree entered herein and is deliberately acting in contempt thereof.

5. All of said acts of Fred W. Stover as set forth in Paragraphs 3 and 4 of this application are in violation of said injunction and decree and are all to the damage of plaintiff.

Wherefore, plaintiff prays as in its original application herein.

Signed and verified by counsel.

(Order Granting Application to Show Cause.)

(Filed in United States District Court on December 10, 1956.)

Upon the reading and filing of the verified application of Farmers' Educational and Cooperative Union of America, a corporation, plaintiff in the above entitled cause, charging the defendant Fred W. Stover to be in contempt of the injunction order of this Court hereinbefore made, it is

Ordered that a rule be and it is hereby issued on the defendant Fred W. Stover to appear before this Court on the 28th day of January, 1947, at 10 o'clock A. M., to show cause why he should be attached for and committed for contempt for violation of the injunction heretofore ordered and issued in this cause, to-wit, on June 13, 1956, and also why he should not be assessed a compensatory fine payable to the plaintiff herein, together with such other penalty as may seem to the Honorable Court consistent with equity and good conscience.

It Is Further Ordered that a copy of said verified application and of this Order be served upon said Fred W. Stover personally on or before the 18th day of January, 1957.

s/ Albert L. Reeves,
Judge.

(Answer to Application for Citation for Contempt of Court of Fred W. Stover.)

(Filed in United States District Court on January 28, 1957.)

Comes now the defendant, Fred W. Stover, and for answer to the Application for Citation for Contempt of Court respectfully states and shows to the Court the following matters and things:

1. This defendant admits that a Decree was made and entered of record in this cause on or about June 13, 1950, enjoining the defendants from using certain registered trade marks which were the property of plaintiff as is shown by the Decree on file in this Court in this case, and as alleged in Paragraph 1 of the Application, but he denies that he has attempted to compete with plaintiff in the use of the trade marks.

2. This answering defendant admits the allegations set forth in Paragraph 2 of the Application.

3. For answer to Paragraph 3 in the Application, this defendant admits that subsequent to the entry of the Decree in the above entitled cause, he supervised the publication and distribution of a newspaper entitled "U. S. Farm Union News", but he denies that he published therein various articles which demonstrated a willful and deliberate defiance of the Decree of this Court and a contumacious attitude towards this Court.

The defendant denies that the use of the name "U. S. Farm Union News" of said publication is in direct violation and defiance of the Injunction issued in this cause.

The defendant denies that the solicitation of funds for the Iowa Union Farmer Association is in direct violation and defiance of the Decree herein, and denies that the allegation with reference thereto has any relevancy or materiality in or to this proceeding.

Defendant denies that the statements contained in said "U. S. Farm Union News" demonstrate that he has no intention of complying with the Decree entered herein and is deliberately acting in contempt thereof.

Defendant admits that the headquarters of the defendants, Iowa Farmers Union and Iowa Union Farmer Association, is at 517 Keo Way, Des Moines, Iowa, where a large sign is displayed containing the name of the corporation, Iowa Farmers Union which is the trade name of said defendant and denies that the sign or the use of said name is in violation of the Decree herein.

The defendant, Iowa Farmers Union uses stationery with its trade name thereon as it has a right to do as it is not and

has not been enjoined from the use of its trade name, Iowa Farmers Union.

The defendant admits that he has conducted a campaign for the solicitation of members of the Iowa Farmers Union, an Iowa Corporation, but denies that he has done so under representation that in a short space of time it will be reinstated as the Iowa Division of plaintiff.

This defendant expressly denies the conclusion contained in Paragraph 3 of the Application to the effect that the general tenor of the remarks contained in the U. S. Farm Union News demonstrates a deliberate and willful contumacious attitude to ignore the Injunction issued herein and to combat plaintiff's efforts to reestablish its Iowa Division and alleges that the statements last referred to are merely conclusions and opinions of the pleader unsupported by any factual basis.

With respect to the last sentence set forth in the third paragraph of the Application, this defendant denies that the subject matter thereof constituted a violation of the Decree in this cause and alleges that that matter was not litigated in this cause and is an attempt to introduce into this case at this time, a collateral issue having no bearing upon the proceeding before the Court and no relevancy or materiality to the contempt charge.

4. Except as hereinbefore specifically admitted or otherwise qualified or explained, the defendant denies the allegations contained in Paragraphs 1, 2 and 3 of the original Application for Contempt filed herein.

5. This defendant, for further answer to the Application herein, expressly denies that he has at any time had or entertained any intention to violate or disobey the terms of the Decree herein, on the contrary, he has caused the name of the Iowa Union Farmer to be changed to U. S. Farm Union News for the purpose of avoiding any confusion of the identity of the defendants with plaintiff or its publication, and to avoid a situation where anyone could charge or accuse defendants were acting in defiance of the Decree or in contempt of this Court.

6. The defendant further alleges that while the original complaint filed in this Court by plaintiff involved a trade

name, upon the trial of the case the plaintiff apparently abandoned any effort or attempt to pursue its cause of action on account of the trade name and the only issue before the Court upon the trial of this case were three (3) trade marks, as is shown by the findings and the Decree. The defendants, Iowa Farmers Union and Iowa Union Farmer Association, are Iowa Corporations and there is no Decree enjoining the defendant corporations from using their trade names and incorporated names and doing business as such. The defendant denies that he has used any of the plaintiff's registered trade marks since June 13, 1956 at any time or place or for any purpose.

7. For answer to Paragraph 4 in the Amendment to Application for Citation for Contempt filed herein, this defendant alleges that he did publish and distribute a newspaper entitled U. S. Farm Union News designated as the May-June, 1956 issue of said paper as well as the July-August issue thereof, but denies that the question as to whether or not he solicited contributions therein for the Iowa Union Farmer Association is relevant to this proceeding or constituted a violation of the Decree herein, and he expressly denies that he published therein articles which demonstrated willful and deliberate defiance of the Decree of this Court and a contumacious attitude toward this Court.

The defendant denies that the use of the name U. S. Farm Union News is in direct violation and defiance of the Injunction issued in this case; that the solicitation of funds for Iowa Union Farmer Association is in direct violation and defiance of the Decree herein; and that the various statements contained in said publication, U. S. Farm Union News clearly demonstrate that the defendant, Fred W. Stover, has no intention of complying with the Decree entered herein and is deliberately acting in contempt thereof. This defendant disclaims any intention of disobeying or defying the Decree of this Court and affirmatively states that he has been acting in what he did upon the advice of legal counsel in whom he had confidence and that said counsel told him that he was not enjoined from using the trade names, Iowa Farmers Union and Iowa Union Farmer Association as they were not trade marks, but trade names

which had been used by said defendant prior to the re-entry into Iowa of plaintiff. That said change of name was made upon the recommendation of defendants' counsel, George Cosson, following a pre-trial conference in this case before Judge William F. Riley, and in an effort to dispose of the litigation.

8. This defendant further denies that the allegations contained in Paragraph 5 of the Amendment to the Application and expressly denies that plaintiff has suffered or sustained any damage by reason of any acts or conduct of this defendant, Fred W. Stover.

9. In support of this defendant's foregoing answer, there is attached hereto, marked Exhibit "A" and by reference incorporated herein and made a part hereof, the Affidavit of the defendant, Fred W. Stover, which is offered in support of this answer.

Wherefore, this defendant, having disclaimed any intent to violate or disobey the Decree of the Court herein, and having fully answered and attempted to purge himself of the charge of contempt, respectfully prays that this Court make an order dismissing the plaintiff's Contempt Application, as amended, and finding this defendant innocent of the charges made in plaintiff's said Application.

EXHIBIT "A"

AFFIDAVIT OF FRED W. STOVER.

STATE OF IOWA)
) ss
COUNTY OF POLK)

I, Fred W. Stover, being first duly sworn, on oath depose and state that I have read the Amended Application for Citation for Contempt and this Affidavit is attached to my answer thereto and offered in support thereof.

After the commencement of this suit, I was informed by one of my counsel, George Cosson, that at a pre-trial conference held in the U. S. District Courthouse in Des Moines, Iowa, before Judge William F. Riley, that Judge Riley had expressed the view that if we changed the name

of the defendant, Farmers Educational and Cooperative Union of America, Iowa Division, to Iowa Farmers Union by appropriate proceedings to accomplish an amendment to our Articles of Incorporation and that we would not at anytime claim that we were affiliated with the national organization nor in any way claim to represent or speak for the national organization, that the case would thereupon become a moot case and that would dispose of the litigation.

After that conference with Attorney George Cosson, I caused the change of name to Iowa Farmers Union, acting upon the advice of Mr. Cosson and pursuant to the conversations related above.

The original complaint filed herein made repeated references to the use of the term or expression "trade names" and likewise, that term was repeatedly used in the Memorandum Brief filed by plaintiff at the time of the filing of the complaint. However, upon the trial, apparently, the plaintiff abandoned any claim to enjoin the use of a trade name or names and Judge Roy Harper, the Judge before whom the case was tried, at the trial and in his findings expressed the view that the case just involved three (3) registered trade marks as appears from the first paragraph of the Memorandum Opinion filed by Judge Roy Harper, May 26, 1956, and the Court is asked to take judicial notice of the language contained therein. We conceded at the trial that plaintiff was entitled to the exclusive use of its symbol and trade mark consisting of the plow, the rake and the hoe, surrounded by a circle.

After the Decree was entered in this case, I consulted with J. R. McManus, an attorney of Des Moines, Iowa, whom I knew had experience in "trade name litigation" in the Federal Courts, and he advised me, after examining the records and files in this case, that the defendants were not enjoined from using the trade names, Iowa Farmers Union and Iowa Union Farmer Association, under which said corporations were licensed to do business by the Secretary of State of the State of Iowa and that we could continue to use said trade names.

I believed and relied and acted upon the statements made to me by my counsel, George Cosson and J. R. McManus as said above.

I am now and always have been a farmer. I am fifty-eight (58) years old. I have never been charged or accused before in my life with contempt of Court or of acting in violation of any Decree or Order of the Court. I never at any time intended to defy or disobey the Order of the Court entered June 13, 1956 in this cause and have studiously attempted to avoid doing so pending our appeal to the U. S. Court of Appeals for the Eighth Circuit.

That after the Decree was filed, our Boards of Directors met and discussed the Decree and its terms. We decided to change the name of our newspaper publication from Iowa Union Farmer to U. S. Farm Union News so that nobody could accuse us of violating the terms of the Decree or conduct constituting a contempt of Court or confuse the identity of our paper with plaintiff's papers. The Board of the Iowa Union Farmer Association authorized the change of name of the newspaper published by it for the purposes stated. Furthermore, the paper being a farm paper distributed among farm families, we did want to preserve the identity of it sufficiently so as to indicate by its name that its circulation was designed and intended primarily for farmers. Furthermore, we wished to extend and broaden our coverage beyond the boundaries of Iowa and for that reason also, adopted the name U. S. Farm Union News as is stated in the May-June issue of our publication on the first page thereof.

The only purpose that we had in placing the words (formerly Iowa Union Farmer) below the name U. S. Farm Union News in our initial issue of the paper under the new name was to indicate to our subscribers the change of name, but the continuance of the same editorial policies and so as to let the subscribers know that the one replaced the other newspaper with merely a change in name, as the subscribers had paid for the publication under the name Iowa Union Farmer.

We were using the name Iowa Farmers Union in Iowa following the amendment to our articles in September, 1955, and we were using the name Iowa Union Farmer Association since 1952.

In the print in our publication we have attempted to avoid the use of type or print similar to the type or print or style

or lettering used by plaintiff in its registered trade marks. The plaintiff's registered trade marks are in a distinctive style or type or lettering. We have in no way imitated or followed such style or type or lettering for the purpose of attempting to avoid confusion of identity. Furthermore, our publication goes almost exclusively to farmers who have already been advised by the press of the State of Iowa and our own publication that there is no affiliation existing or claimed between the defendant corporations and the plaintiff, so that there is no likelihood that the recipients and the advertisers of our paper would be mislead as to the identity of our publication and the plaintiff's.

The same type of information has also been widely disseminated by and through the medium of broadcasting stations in Iowa and elsewhere which would reach all subscribers and publishers to which our publication has been sent since June 13, 1956.

Signed and sworn to with jurat attached.

(The Evidence.)

Mr. Miller: This case, your honor, was tried in February of this year. Mr. McManus and I assume that your honor will take judicial notice of the record made at the time that case was tried and upon which Judge Harper's findings of fact and conclusions of law and decree are based. Because of the fact that the case has been appealed, as admitted in the pleadings, and the printed record has been filed by the appellant, I would like to have identified a copy of the printed record which would give your honor an opportunity to find out what the record is without having to go through a very bulky file.

The Court: I don't know whether I can take judicial notice of the printed record, but I would have all the records of the court—

Mr. McManus: I have no objection, your honor, and I think that what you have suggested is correct, and that was really the matter that Judge Miller and I discussed, that you would take judicial notice of the records of this court.

But I haven't any objection to your honor receiving in evidence as part of their proof the printed record in the Circuit Court, which contains most of the pertinent matter pertaining to the trial below.

The Court: In other words, the record here is offered in lieu of the judicial notice that I take of the records of the court because that is a transcript of the record?

Mr. McManus: That would be agreeable. It isn't a transcript, your honor, but it contains a transcript of the proceedings and an abstract of the testimony.

Mr. Miller: It is offered, your honor, to assist your honor in identifying the matters of which you take judicial notice, and we take the position that what is here is a correct statement of the matters of which you take judicial notice. There are some additional matters that we will refer to.

The Court: Yes.

Mr. McManus: I think it would be appropriate at this time to bring to your honor's attention a matter about what there is no dispute, and that is that this is a civil contempt proceeding.

The Court: Yes, and not a criminal contempt proceeding.

Mr. Miller: Yes, that is correct. In addition to the record which we have just identified, we call your honor's attention to the envelope of exhibits which were introduced in the trial of this case. We do that because of the fact that in Mr. McManus' record he does not set out the exhibits, and we think that Exhibits I-1, I-2 and I-3 are very important in that they are the certification on the principal register of the patent office of the three trade marks that are involved here, and they definitely spell out the extent of the coverage of the trade mark.

The Court: Now, Judge, are you asking for judicial notice of the envelope with all the exhibits?

Mr. Miller: That's right, your honor, but I particularly call your attention to these three.

The Court: I see.

Mr. McManus: I would like to have something to say in that connection if I may at this time, your honor. I don't

agree to this procedure that counsel has suggested with respect to the entire envelope of exhibits because I might want to make at this time appropriate objections to the offer of some of these exhibits. However, I have no objection to your honor receiving in evidence as far as I am concerned, the three exhibits, I-1, I-2 and I-3, being photostatic copies of the registration of the trade marks in the United States Patent Office upon which the plaintiffs rely, and they may be received in evidence. However, I don't want by my silence to acquiesce in the procedure that the judge has suggested that you take judicial notice of all of these other exhibits that are in that envelope. I have no objection to the admission of the three photostats.

The Court: Of course, Mr. McManus, you would have the right to make your objections even if I take judicial notice of them upon the grounds that they are incompetent, irrelevant, or immaterial, or anything of that sort. If they are pertinent—counsel has asked me to take judicial notice. Upon what theory would you make your objections to them if they were offered in the trial of the case before?

Mr. McManus: Well, upon the theory, your honor, that this is a civil contempt proceeding in which the question of wilfulness and intent is material

The Court: Yes.

Mr. McManus: These exhibits are offered—were offered on the original trial of this case in support of all the issues pleaded in the plaintiff's complaint. I represent an individual defendant here.

The Court: If I may interrupt you, Mr. McManus, your thought is that they would not bear on the question of his alleged contempt?

Mr. McManus: That is correct, your honor.

The Court: Well, then, Judge, I think Mr. McManus should have the right to take his objection to them on the grounds—you asked me to take judicial notice of them and he counters by saying "even if you do they are not relevant in this case." That is the point you make?

Mr. McManus: That is true, your honor. And in our answer to the application for contempt, filed by the plaintiff, we have expressly raised the question of relevancy

and materiality with respect to some of the matters set forth in the application.

The Court: I get your point.

Mr. Miller: I would like to respond to that to this extent—that I am prepared to present, and will present, authorities to the effect that Mr. McManus cannot collaterally attack the judgment that was entered in this case. That injunction, being right or wrong, is binding upon the defendant Stover.

Mr. McManus: They won't need any authorities on that proposition. I'll agree to that.

The Court: You agree to it? Well, I think then my ruling should be that I will receive them subject to your objection and then when I consider the case I can determine whether they are relevant to the issue here.

Mr. McManus: Well, your honor, I confess to an almost total lack of familiarity with the proper procedure of matters of this kind in that this is my first experience with a contempt proceeding, and all that I want to do is preserve my client's rights and my record.

The Court: Why, of course you do.

Mr. McManus: It is then understood—and I don't want to delay these proceedings—I want to assist counsel in getting a proper record before the court as quickly as possible, at the same time trying to preserve my client's rights. May it be understood, Judge Miller, that with the exception of Exhibits I-1, I-2 and I-3, which are the photostatic copies of your registration, that I may be deemed to have the benefit of the objection that each and all of the rest of the exhibits which you offered are incompetent and immaterial, and have no relevancy to the issues presented before the court in this contempt proceedings, or for whatever that objection may be worth, with respect to each and all of the exhibits.

Mr. Miller: That is satisfactory.

The Court: I think that preserves your rights, Mr. McManus. And I will not overrule your objection but I'll receive it subject to your objection. And then when you submit your briefs I can look into the question of its competency.

Mr. McManus: We might also save time at this point, too, by suggesting that with respect to one of the trade marks, the circle enclosing the plow, the rake and the hoe, that we never claimed to have the right to use it, and never have used it since the decree was entered in this case, so that eliminates one of the trade marks in my opinion. Is that right, Judge?

Mr. Miller: Well, as far as I know, it's correct.

Mr. McManus: You don't contend that we have?

Mr. Miller: No, and it was conceded at the trial that you had no right to use it.

Mr. McManus: And that we hadn't been using it.

Mr. Miller: Yes.

Mr. McManus: So that just leaves the two trade marks.

The Court: Very well. Have I some way of identifying that trade mark that you are agreeing goes out of the case?

Mr. Miller: Yes, sir, the trade mark is on Exhibit I-2.

The Court: Whose exhibit is that, the plaintiff's? That is the plaintiff's exhibit I-2?

Mr. Miller: That's right, your honor.

The Court: Now that trade mark is out. There is no contention that he violated that trade mark.

Mr. Miller: That's right, your honor.

The Court: Or violated the judgment and decree in reference to it.

Mr. Miller: The case really hinges on the trade mark identified as I-1, which consists of the words "Farmers Union", and the trade mark which is Exhibit I-3, and refers to the words "Union Farmer."

The Court: The first one, Judge, that is on I-1, what does it refer to?

Mr. Miller: The words "Farmers Union." And I-3 refers to the words "Union Farmer".

The Court: Union Farmer. I take it that the contempt citation is that he violated those two trade marks?

Mr. Miller: That's right, your honor.

The Court: Very well.

Mr. Miller: Now, your honor, it is admitted in the pleadings that the defendant Stover is the—well, he's the president of the Iowa Farmers Union.

The Court: Now I didn't understand you, Judge.

Mr. Miller: He is the president of the Iowa Farmers Union, the defendant Fred W. Stover.

The Court: Is it an individual or a corporation?

Mr. Miller: Yes, he is an individual. He is the one that we are citing. Fred W. Stover.

Mr. McManus: He is the only defendant in this proceeding, your honor.

The Court: Now then, what about his store?

Mr. McManus: Mr. Stover is conceded to be the president of the Iowa Union Farmer Association, which was one of the defendants in the original case.

The Court: That is Union Farmers Association?

Mr. Miller: Iowa Union Farmers Association, your honor, and is also the president of the Iowa Farmers Union.

The Court: That's all admitted in the pleadings, is it?

Mr. Miller: That is my understanding. Isn't it?

The Court: Is that right, Mr. McManus?

Mr. McManus: Well, in paragraph 3 of the answer, your honor, we admit that this defendant Stover supervised the publication and distribution of a newspaper entitled "U. S. Farmers Union."

The Court: Yes.

Mr. McManus: That admission is made in our answer. And that he is the president of the Iowa Union Farmer Association, which caused that paper to be published and distributed. Those things there is no dispute about.

Mr. Miller: Well, in the paper it also recites that he is the president of the Iowa Farmers Union. I assume you don't question that, do you?

Mr. McManus: No. No, we don't question that. That's true also. But we object to that in this proceeding for the reason that it is irrelevant and immaterial because the Iowa Farmers Union does not publish the publication, the U. S. Farm Union News. It is published by the Iowa Union Farmer Association, a separate and distinct legal entity. We object to that part of what the judge says on the ground of relevancy and materiality.

The Court: Well, to shorten it up I will receive it subject to the objection counsel is making.

Mr. Miller: It becomes material in other respects, your honor. Now in connection with that admission, we would like to identify and offer in evidence four copies of the Iowa—

Mr. McManus: Wait a minute. Why don't you have them marked?

Mr. Miller: I will. Four copies of U. S. Farm Union News which are numbers 1, 2, 3, and 4 according to their numbering, and are exhibits 2, 3, 4 and 5, in this proceeding.

Mr. McManus: We object to the admission of Exhibits 2, 3, 4, and 5, and each of them, waiving any identification or foundation proof, however, for the reason that they are incompetent, immaterial and irrelevant, and don't tend to prove or establish any issue involved in this proceeding.

The Court: Yes, I will receive it subject to the objection, I will receive them, rather.

Mr. Miller: It is admitted in the pleadings that the headquarters of the two corporations, Iowa Farmers Union and Iowa Union Farmer Association, is situated at 517 Keo Way, Des Moines, Iowa, and that there is displayed at that address a large sign reading "Iowa Farmers Union." In connection with that admission in the pleadings, we desire to offer in evidence a photograph showing that sign, as Exhibit 6 in these proceedings.

Mr. McManus: We have no objection to its admission, your honor.

Mr. Miller: It is also admitted in the pleadings that the Iowa Farmers Union uses stationery with the name "Iowa Farmers Union" printed thereon, and that the defendant Stover, as president, uses that stationery, and for the purpose of identifying such stationery, we would like to offer, in evidence Exhibits 7 and 8.

Mr. McManus: Now, Judge Miller, I don't want to be captious and waste time, but I think we are wasting time here by introducing in evidence matters concerning which there is no dispute and with respect to matters that are admitted in the pleadings. It is expressly alleged in paragraph 3 of my answer that the defendant Iowa Farmers Union uses stationery with its trade name thereon, and we

admit that Stover has been using it. Now it seems to me concerning matters that there is no dispute, and there is no handwriting, that we are taking up time. However, if you want to offer those I have no objection. It is just a matter of saving time.

The Court: I suppose the judge is offering it as illustrative of the—

Mr. Miller: Yes, that's right, your honor.

The Court: Yes. Very well, for that purpose—

Mr. McManus: (Interposing) I have no objection.

Mr. Miller: In connection with the admission on page 2 of the answer of the defendant Stover, "that the defendant admits that he has conducted a campaign for the solicitation of members of the Iowa Farmers Union," it is stipulated that Julius Jacobson has assisted Mr. Stover in that project. Is that right?

Mr. McManus: Is that right? (Addressing Mr. Stover.)

Mr. Stover: (Nods head).

Mr. Miller: In connection with the admission in paragraph 3—

The Court: You mean of the answer, or—

Mr. Miller: Of the answer.—"that the defendant Stover supervises the publication and distribution of the newspaper entitled 'U. S. Farm Union News,'" it is also admitted that the defendant Stover is the author of editorials contained in the four issues, copies of which have been introduced in evidence herein.

The Court: Yes. Very well.

Mr. Miller: It is also admitted by the defendant Stover that he is and has been the editor of the U. S. Farm Union News at the time of the publication of the four issues introduced in evidence herein.

Mr. McManus: That may be admitted.

Mr. Miller: On page 7 of Plaintiff's Exhibit 5 is a statement that the Iowa Farmers Union has received educational funds during 1956 from the following Farmers Union Cooperatives: Farmers Union Livestock Commission of Omaha, $18.86; Farmers Union Livestock Commission, Sioux City, $139.29; Farmers Union Livestock Commis-

sion of Sioux Falls, $1342.18; The Farmers Union Marketing Association, St. Paul, $31.33; Farmers Union Grain Terminal Association, $731.42; and the Great Plains Supply Company, $2,628.36. I would like to inquire of counsel and the defendant if they deny that those are true statements?

Mr. McManus: We do not deny that they are true statements, and we do not deny that they are in the exhibit at the place that counsel read from, but we object to them as incompetent, immaterial and irrelevant, and having no probative force whatever upon the issues involved in this proceeding, involving purely a collateral matter that was in no way in issue, litigated or determined in the original law suit, and contend that they cannot be inquired into here for any purpose, as they are purely collateral to the law suit that was already tried in this court last spring.

The Court: It will be received subject to the objection. Judge, I understand that you are offering page 7 of Exhibit 5. Exhibit 5 has been heretofore offered in evidence?

Mr. Miller: That's right, your honor.

The Court: So that it is a matter then of just reading from a matter that was already offered in evidence.

Mr. Miller: That's right, your honor.

Mr. McManus: In view of the fact that he is apparently offering it for this specific purpose in support of a specific statement in his complaint or application for contempt, which we have denied, we are making this specific objection to apprise the court of our position with respect to that matter, and that is all.

The Court: Very well. It will be received subject to the objection. By receiving it that way then the record is full and complete.

Mr. Miller: The paper for all purposes is in the record as far as that is concerned, and that is the colloquy we had here a moment ago, your honor. I just wanted to raise the issue, your honor. That was the reason for it.

The Court: Yes.

Mr. McManus: Now, if I may, I also want to add to—no, I'll let the objection stand as it is. It is all right as far as I am concerned.

The Court: Plaintiff may proceed.

MAURICE O'REILLY,

called as a witness in behalf of the plaintiff, being first duly sworn by the Clerk, testified under oath as follows:

Direct Examination by F. M. Miller.

Q. Your name is Maurice O'Reilly? A. It is.

Q. Where do you live, Mr. O'Reilly? A. Barnum, Iowa.

Q. And are you a member of the plaintiff, National Farmers Union? A. I am.

Q. And are you employed by the plaintiff? A. Yes.

Q. In what capacity? A. As organization director for the National Farmers Union in Iowa.

Q. And how long have you been so employed? A. Since November 1st, 1955.

Q. Now, what is the nature of your duties as such? A. Well, my duties—

Mr. McManus: Now just a moment, Frederic. Now that is objected to as hearsay and incompetent, immaterial and irrelevant to any issue in this proceeding.

The Court: Well, I regard it as preliminary.

Mr. Miller: That's right, your honor.

The Court: And the court is interested in knowing what he did leading up to the crucial point about which you are going to give testimony. The objection is overruled.

A. Well, I have had charge of recruiting people and helpers in the reactivation or establishment of a National Farmers Union in Iowa. Assist in getting people to help me conduct meetings.

Q. And in your work do you travel about the state? A. Yes, I do.

Q. How much of the state do you cover? A. Oh, I have been—in the last year and a half clear across the state. I have been to almost every county in the state.

Q. And in traveling about the state have you contacted Mr. Julius Jacobson? A. Yes, I have.

Q. Is he the one that has been mentioned here as assisting the defendant Stover in the organization of the Iowa Farmers Union? A. He is.

Q. And has the activities of Mr. Jacobson in any way interfered with your work?

Mr. McManus: Now just a minute. That question is objected to for the reason—

The Court: It calls for an opinion and conclusion.

Mr. McManus: (continuing)—it calls for an opinion and conclusion.

The Court: It would call for a conclusion, Judge. He would have a right to say what he did and then the court or the fact trier would determine whether or not it interfered.

Q. In your contacts with other farmers for the purpose of securing members for the National Farmers Union organization do you run on to people who are members of Mr. Stover's organization? A. Yes, I have.

Q. Have you interviewed any of them who were confused between the organizations?

Mr. McManus: Just a minute. That question is objected to as improper in form, leading and suggestive, calling for hearsay and the opinion and conclusion of the witness, and incompetent.

Mr. Miller: Well, I will withdraw the question.

Q. What has been your experience with them?

Mr. McManus: Now just a minute. That question is objected to for the same reasons urged to the previous question, and is a leading question following a leading question pertaining to the same subject matter, and it is incompetent, immaterial and irrelevant.

The Court: If it pertains to the conflict, and I take it there was a certain conflict between the two organizations, he may tell what—

Mr. McManus: Excuse me, your honor. Are you holding that he may testify with respect to hearsay statements made by unidentified people at unidentified times and places?

The Court: As I understand, there was a conflict between the two organizations.

Mr. Miller: That's right, your honor.

Mr. McManus: That's correct.

The Court: Now then, he can testify about what he experienced in that conflict.

Mr. Miller: That's right.

Mr. McManus: But your honor, here we have a man charged with contempt of court.

The Court: I don't mean to interrupt you, but this would be preliminary to what was done. The court is interested in knowing just what he did that was contemptuous. Very well, he may answer.

Mr. Miller: Do you understand the question?

The Witness: I would like to have it again.

(The pending question was read to the witness as follows:)

"Q. What has been your experience with them?"

Q. Now will you answer the question. A. Well, I have called on several farmers who had, I assume, previously been members of the Iowa Farmers Union, and in one instance I had made arrangements to have a meeting in that county or in a town near these people and the meeting had been tentatively scheduled for a date four or five days after I was there, and then in a couple of days I received a postal card from the man telling me that the meeting would have to be called off for the time being.

Mr. McManus: Now just a minute. Now I move to strike out all of that answer for the reasons urged in the objection, and separately move to strike that he had contacted people he had assumed who had previously been members of the Iowa Farmers Union as the opinion of the witness, and incompetent. That he arranged to have a meeting, and received a post card is hearsay and incompetent. None of his answer has any probative force or any issue before this court.

The Court: Up to this time you are right, but it is leading up and we want to find out what the facts are. It may be leading up to something. The objection is overruled.

Mr. McManus: Very well.

Mr. Miller: What I am trying to do, your honor, just so that we understand each other, I'm trying to get evidence of a verbal act. I admit that this would be hearsay under ordinary circumstances, but I believe I am entitled to it.

The Court: Yes. I am admitting it up to this time.

Q. Now in these experiences such as you have recounted, was there any reason given why these people were not interested in the meeting?

Mr. McManus: Now just a minute. That is objected to as calling for the opinion and conclusion of the witness as to any reason given, and incompetent, immaterial and irrelevant.

The Court: That is on a vital matter. I think your objection is good, but then it is leading up to something, so the witness may answer. The right is reserved to you to move to strike it all out.

Q. What was it?

Mr. McManus: Same objection.

The Court: Objection overruled.

Mr. McManus: In other words, counsel asked him a question, your honor, and I wasn't afforded an opportunity to make an objection before he started to answer, and I make the same objection that I made previously, and move to strike the answer so far for the reason given.

The Court: It may be understood that you make the same objection to this entire line of questioning so that you do not have to repeat it.

Mr. McManus: Thank you, your honor.

A. Well, this particular man that I talked to told me later on that they were going to wait until the confusion was settled and determined who had the right to organize under the name of Farmers Union in Iowa.

Mr. McManus: I move to strike that answer for the reasons urged in the objection, and for the reason that

no man is identified and no time and placed fixed, and it is hearsay, incompetent, immaterial and irrelevant.

The Court: It is all preliminary. The objection will be overruled at this time.

Q. Mr. O'Reilly, in arranging these meetings just what did you do? A. I would go out and contact farmers, some of whom I have known myself, and others who had been referred to me by friends of mine, and ask them to set up or arrange for a meeting, at which time we could discuss setting up an organization in that county for the National Farmers Union.

Mr. Miller: Your honor, it has been admitted in the former trial that the charter of the Iowa Farmers Union was cancelled by the National Farmers Union in March of 1954. Now that is a matter about which there is no dispute, and this all of course ties in with that fact.

The Court: Now the charter of the National Farmers Union—

Mr. Miller: No, the National Farmers Union revoked the charter of the Iowa Farmers Union.

The Court: I see.

Mr. Miller: In March of 1954. It is admitted by the pleadings that since that time the Iowa Farmers Union is still soliciting new members, and that that solicitation has continued since they were enjoined from so doing, as we interpret the decree, and this evidence is to show the effect of their violation of the decree upon our campaign to reactivate and organize in this state. Now Mr. McManus has a legal question on it, but this is submitted to you, your honor, to understand the factual background.

Mr. McManus: Of course I think I can say that we don't concede that what counsel has said is true with respect to our being enjoined from soliciting members, just to clarify our position too.

The Court: Yes.

Mr. Miller: I grant that.

Q. Now, as a result of this solicitation have you been able to get new members?

Mr. McManus: Now just a minute. That question is an obvious shotgun, broad-sided question that I can't

understand just what is sought to be elicited by that question, and I object to it as improper in form, incompetent, immaterial and irrelevant.' Calling for the opinion and conclusion of the witness, and incompetent.

The Court: The objection is overruled at this time. Somewhere along the line the defendant must have been at fault in connection with the solicitation of members.

Mr. Miller: Your honor, it all goes to the interpretation of the injunction.

The Court: Yes, that's right.

Mr. Miller: And we assume that we have to show some damage.

The Court: I will receive it subject to the objection so that you may—

Mr. McManus: (Interposing) And I assume that the remark that your honor just made before the colloquy with Judge Miller was intended to apply to your honor's state of mind with respect to the receipt of the evidence, and not to make any declaration.

The Court: Oh, no, no. I have no reason at all.

Mr. McManus: I just wanted to keep the record straight.

Mr. Miller: Read the question to him.

(The pending question was read to the witness as follows:

"Q. Now, as result of this solicitation have you been able to get new members?")

A. Not as many, and not as fast as we felt we would ordinarily expect to get them.

Mr. McManus: Now move to strike that answer out for the reasons urged in the objection, and as the opinion and conclusion of the witness, and incompetent.

The Court: Well, of course that was a conclusion. The substance of it was members are hard to get. There may have been some fault for it, and that will appear I suppose.

Mr. Miller: Yes, sir.

The Court: The objection will be overruled at this time.

Q. In the conduct of this campaign did you explain to these people the situation in regard to a local Iowa organization for the National Farmers Union? A. Yes, I did.

Mr. McManus: Same objection. Hearsay.

The Court: Objection overruled at this time.

Q. What explanation—

Mr. McManus: If your honor please, I wonder if you would see fit to caution the witness to afford me a little pause between the question and the objection because I want to make my record on some of these important things.

The Court: So that your record may be made up, let it be understood that you make similar objections to this whole line of testimony.

Mr. McManus: Without the necessity for repeating it, and that is agreeable to the court and counsel?

Mr. Miller: That is agreeable to us.

The Court: So that you won't have to repeat it.

Q. Now what explanation did you give them? A. That we were organizing in Iowa to reactivate the Iowa Division of the National Farmers Union.

Q. And did you say anything about the fact that Mr. Stover's organization had had their charter revoked?

Mr. McManus: Now just a minute. Now that is objected to. It is leading and improper in form. We are not trying out in this proceeding the original case. This is purely a contempt proceeding. We object to this question for those reasons.

The Court: The objection is overruled at this time, with the right reserved to you to move to strike it out later on.

Q. Now the matter that I have been inquiring about, have those matters occurred since or before June 13th, 1956? A. Well, they occurred both before June 13th—before the decree was entered, and have continued to occur since the decree was entered on June 13th, I believe it was.

The Court: What year?

Mr. Miller: 1956?

The Witness: 1956.

Q. Do you know how many members the National Farmers Union has in Iowa at this time.

Mr. McManus: That is objected to as immaterial.

The Court: Well, it may be. The objection will be overruled at this time.

A. Yes.

Q. How many are there?

Mr. McManus: Same objection.

A. As of now about 3,150 or 3,200.

Q. Do you know what the minimum requirement is for the issuance of a charter to a state organization? A. Yes.

Q. What is it? A. Five thousand members.

Q. How long have you been engaged in this campaign in Iowa undertaking to get sufficient members to get a new charter? A. Since about the 25th of November, 1955.

Q. Can you explain to me in a little more detail the occurrences that have been experienced by you in trying to get these new members in Iowa?

Mr. McManus: Now just a minute. That is objected to unless the time and place and the person and circumstances is first fixed and the foundation laid. It is incompetent, immaterial and irrelevant.

Q. Well, as to time, make it subsequent to June 13, 1956, and as to place, you can name the place in your answer. A. Well,—

Mr. McManus: Same objection.

The Court: The objection will be overruled at this time.

A. (Continuing)—as one example, in Buena Vista County we had arranged with some farmers in that area of the area of Albert City to set up a meeting, and then in about a week, at a date about a week later, and upon returning to our office, I had a postal card from the man who had agreed to set up the meeting telling me that it would not be possible to have the meeting at the specified time and that he would get in touch with us later.

Q. Did he get in touch with you later? A. He did not.

Q. Well, did you have any other experiences? A. Well, then following up that meeting I went back about the 27th or 8th of December and talked to the man in Albert City who had agreed to set up the meeting last fall, and he told me that the reason they didn't set it up was that they wanted to wait until the confusion had been settled and which organization was going to be the Farmers Union in Iowa.

Q. Now did you have any—

Mr. McManus: Now, your honor, I take it my objection is going along to all these questions?

The Court: Yes. I understood your objection would run to this entire line.

Q. (By Mr. Miller—Continuing) Did you have any other experience of that character, and if so, tell us the time and place where you had those experiences. A. Well, I had an experience similar to that in Clinton County in I believe about the first week in October and we had a group of farmers in to a meeting to discuss the possibility of organizing in that county and setting up a county organization, and two or three men came up to me after the meeting and stated that they didn't think it would be possible to set up or start organizing in the county until the confusion of the two organizations calling themselves Farmers Union was finally settled or determined.

Q. Did you have any other experiences of that kind? A. Yes, I had the same experience in Dubuque County, where we would get people in the county—farmers in the county to call in ten or fifteen men to talk or discuss the possibility of organizing in the county, and invariably they would state that there was no use in trying to organize until it was determined which Farmers Union had the right to organize in Iowa.

Q. Now what time was that? A. Oh, that would be in last summer and fall.

Q. Do you know how much money has been expended by you since June 13, 1956 in this organization work for the National Farmers Union in Iowa? A. Yes.

Q. How much has it been? A. Well, since the decree was filed in June, middle of June, or the 13th of June,

about thirty-seven or eight thousand dollars. In addition to that there has been material furnished, publications and news letters furnished from the National Office in Denver of which I have no record of.

Mr. Miller: You may cross examine.

Cross Examination.

By J. R. McManus:

I am not the only salaried employee engaged in organization for the National Farmers Union in Iowa. We have a man named Howard Potter who has been helping in the state since about July 1st in organization work. I did not see the defendant, Fred W. Stover, in Buena Vista County on any occasion when I visited that county. I did not see Fred Stover in Clinton County at any time or place since June 13, 1956. I saw a man in Buena Vista County named Carl Benna of Albert City. He lives on a farm near Albert City. I also talked there to a man by the name of Peterson, over by Sulphur Springs, I believe it was. He is the one that sent me up to see Benna. I believe his first name is Carl. I am not sure though. I believe that's about all I have talked to in Buena Vista County. I talked to Anton Green and Fred Bushlaugh in connection with the incident I have related which occurred in Clinton County. Green and Bushlaugh live in Grand Mound. I am unable to give the names and addresses of anyone else at the meeting. I do have something to do with the distribution of literature from the Denver office of the National. The publications were sent to me in bulk and they were sent out under my supervision to various people in the state. Some were distributed by mail and by hand-outs at meetings. We have had considerable difficulty in obtaining new members.

Q. And you have some competition in that respect with another national farm organization that has been operating in Iowa for many years commonly known as the Farm Bureau, have you not? A. You mean they are a competitive organization?

Q. Yes, they are trying to get new members all the time, too, are they not? A. Yes, that's right.

Q. And they are working in the same field that you are, among the farmers? A. Quite generally, yes.

Q. And they have a membership in Iowa of between 140 and 150 thousand members, do they not? A. The Farm Bureau?

Q. Yes, sir. A. I don't know what they have this year. I believe last year they claimed 130 or 138 thousand.

Q. There is also another national farmers organization organizing and soliciting members in Iowa known as "National Farmers Organization", is there not? A. That's right.

Q. They are also competing with the organization for membership all the time, aren't they? A. Yes. In certain areas. In other areas they are not.

Q. But you have encountered their competition in certain parts of the state? A. They are very friendly with our organization.

Q. I didn't ask you that. You have encountered their competition in certain parts of the state, haven't you? A. Yes, sir.

Q. And you have found that they have members in certain parts of the state? A. Yes.

Q. I am referring to the National Farm Organization? A. That's right, yes, sir.

Q. Now the Farm Bureau has been in existence a long time, hasn't it? A. Since about 1917, I believe.

Q. And been operating in Iowa for a long time, hasn't it? A. Yes.

Q. You have been operating here only since November, 1955, is that right, in this organization work? A. That's right. The Farmers Union has been in Iowa since 1916 I believe.

Q. I am talking about you, personally. You have been engaged in the organization work since November, 1955? A. That's right. Yes, sir.

I have spent all my time in Iowa engaged in such work from about the first of June until now. In a little more than six months I have spent thirty-seven or thirty-eight thousand dollars. Prior to June first, we had about 1,600

members in Iowa. Between 15 and 16 hundred. At a cost of thirty-seven to thirty-eight thousand dollars. I have about doubled that in the last six or seven months. The last time I talked to Mr. Benna at Buena Vista he told me he had been a member of the Farmers Union for years but outside of what he told me I had no other knowledge. He is the only one that told me personally that he belonged. In the last six or seven months I have had a good many meetings. I suppose an average of three to four a week. I suppose at meetings and in personal contacts and by telephone I have, myself, contacted or talked to in Iowa since June 13, 1956, perhaps three or four thousand or more farmers. It is pretty hard to estimate. I am giving you my best judgment.

Re-Direct Examination.

In traveling about the state I saw Mr. Jacobson I suppose about six or seven times but I visited with him over at Grand Mound in Clinton County during the first or second week of October. He told me what he was doing there.

Q. What did he say?

By Mr. McManus: Now just a minute. That is objected to for the reason that it calls for hearsay. No foundation laid. There is no showing or any power or authority upon the part of Julius Jacobson to bind this defendant or any of the defendants and it is incompetent, immaterial and irrelevant, and not re-direct.

The Court: Well, that is true. It may be that the purpose of the question is to enable—to find out what this witness did after his conversation with Mr. Jacobson.

Mr. Miller: Well, it has been conceded, your Honor, that Mr. Jacobson is assisting the defendant Stover in this—

The Court: An agent for him?

Mr. Miller: Yes, Your Honor.

The Court: Upon that theory you are offering it?

Mr. Miller: That's right.

The Court: The objection will be overruled.

A. He told me that he was doing organization work for Mr. Stover of the Iowa Farmers Union, and I asked him if he had been working in most of the counties and he said as many of them as he could get in.

In these travels I saw some of the defendants' newspapers. I also saw a letter or a newsletter or a statement that was mailed out, oh, along I think in December, the early part of December or the last part of November and I have seen his paper in elevators and different places where I have been. Some of the people that I have solicited are also Farm Bureau members. Some of them are and some of them have been. Some of them that are Farm Bureau members joined the Farmers Union and many of the National Farmers Organization joined the Farmers Union.

Mr. McManus: Now before this witness leaves the stand I move to strike all of his testimony for the reasons urged in the various objections made at the time the questions were propounded to the witness, and for the further reason that the testimony of this witness contains no probative proof of any issue involved in this proceeding.

The Court: I will take the motion with the case. I will not rule on it at this time.

Mr. McManus: I understand, Your Honor.

(Witness excused.)

It was then agreed between counsel that Mr. Stover would ascertain the facts in regard to certain receipts and that the plaintiff could put Mr. Stover on the stand and interrogate him and elicit the information counsel for the plaintiff sought to prove in connection with those receipts and with that understanding, and reserving the right to put in that proof, the plaintiff rested.

Mr. McManus: Well, now, Your Honor, as I say, due to my unfamiliarity with the method of proceeding in matters of this kind, I assume it is unnecessary for me to make any motion.

The Court: No, sir, it would not, and I take it we are all—these proceedings are not very common in the courts. They are not very usual, I mean.

Mr. McManus: Well, in any event it will do no harm, and for the record I move at this time to dismiss the proceedings for the reason that the plaintiff, or applicant, has wholly failed to establish by competent proof the material allegations of his application, as amended, and there is no showing in this record which would warrant the court in finding the defendant guilty of the accusations and charges contained in the complaint.

The Court: Yes. I couldn't intelligently rule on that at this time.

Mr. McManus: I understand, your honor. I am simply making it for the record. Now, are you ready to proceed now, your honor?

The Court: Yes. I am.

(Defendant's Evidence.)

Mr. McManus: Judge Miller, do you have a copy of the original memorandum brief that you filed in this court at the time you filed your complaint?

Mr. Miller: I think so.

Mr. McManus: If so, I wish you would produce that for me, and I ask the court to take judicial notice of the fact that in the original complaint and the amendment to the complaint repeated references were made to trade names preceding trade marks and other marks. In other words, I am asking you to take specific notice of the fact that very frequently in the original complaint reference was made to "trade names"; and the purpose of this offer, your honor, is for the purpose of showing that on the trial they abandoned the trade name theory, and when the case ended up and was submitted, it involved an infringement of three registered trade marks. And that is the purpose of that.

The Court: I see no reason why I shouldn't take judicial notice of the pleadings as attested by counsel.

Mr. Miller: That's right. We have no objection to that. However, as far as the brief was concerned, I don't think it ever was made a part of the record. This memorandum brief that we delivered to counsel, I don't—

Mr. McManus: (Interposing) Is that it, Fred?

Mr. Miller: Yes, that is it.

The Court: Briefs are not a part of the record, properly.

Mr. McManus: He filed it at the time of the complaint, and I wasn't in the case at that time, your honor, and I didn't know whether it had been filed and made a part of the record in this case or not.

The Court: Usually they are not. Conceivably, they could be made a part of the record.

Defendant's Exhibit "A" marked for Identification.

Mr. Miller: Your honor, for the purpose of the record, when this case was commenced, George Cosson and his son Clarence Cosson represented the defendants, and I practice law the hard way. I write my brief before I write my petition.

The Court: You do it the wise way.

Mr. Miller: So when I served the petition on Mr. Cosson I also delivered him a copy of my trial brief, but the brief that was actually delivered to Judge Harper, as I remember, was different than this.

Mr. Markman: This was the one that was delivered to Judge Harper, Judge Miller. (Indicating). I don't know whether that is the one Mr. McManus is referring to or not.

Mr. McManus: I am referring to the one that you just mentioned that you delivered to Mr. Cosson with your complaint.

Mr. Markman: That wasn't the one.

Mr. Miller: This was the one that I delivered to Judge Harper (indicating).

Then to clarify the record, this is the brief (indicating).

Mr. McManus: No, wait a minute, let me have the other one.

Mr. Miller: Let's have the other brief. (Brief handed to counsel).

Defendant's Exhibit "A" Remarked as Exhibit "B". New Exhibit "A" Marked.

Mr. McManus: Now, Judge Miller, Exhibit "A" is a copy of the original memorandum for trial brief which you supplied to George Cosson at the time of the filing of your original complaint in this case. That's true, is it not?

Mr. Miller: That is correct.

Mr. McManus: And Exhibit "B" is the copy of the brief that you filed with Judge Roy Harper, the presiding judge, by assignment, at the conclusion of the trial of the case in this court, or thereafter.

Mr. Miller: Well, it was delivered to Judge Harper on the 1st of March, which was shortly after the trial was had.

Mr. Markman: Mr. McManus, so there will be no misunderstanding, a copy of this brief that was delivered to Judge Harper was also delivered simultaneously to Mr. Cosson.

Mr. McManus: Well, that's—

Mr. Miller: (Interposing) Mr. Cosson's acceptance of service is on the brief.

Mr. McManus: Now, your honor, not for the purpose of inviting the consideration of the contents in their entirety, I am offering Exhibit "A" which is the memorandum for trial brief which accompanied the filing of the original complaint and which was delivered to counsel in this case, for the purpose of pointing out that repeatedly throughout that brief authorities are cited as dealing with trade names as distinguished from authorities cited dealing with the subject of trade marks, and especially registered trade marks; and I am offering Exhibit "A" in behalf of the defendant, and I am offering Exhibit "B" which is a copy of plaintiff's brief and argument filed by plaintiff's counsel with Judge Roy Harper, judge by assignment, before whom this case was tried, which was filed with the court and delivered to defendant's counsel by plaintiff's counsel on or about the 1st day of March, 1956; and I'm filing it for the purpose of attempting to show to the court the change of front which had occurred between the time of the filing of the case and the time of trial of the case as the case was tried prior to March 1st, 1956.

The Court: The original brief is on one theory and the brief before Judge Harper was another?

Mr. McManus: That is correct, your honor. That is the only purpose for offering these briefs.

Mr. Miller: We object to the original brief being filed because it is not a part of the record, and never has been; and we also object to the two briefs on the theory that while Mr. McManus disclaims any intention to do so, the effect of what he is trying to do would be to impeach the judgment and decree herein, which he cannot do in these proceedings.

The Court: No, he can't do that. However, counsel says that he wants to show—

Mr. Miller: (Interposing) Yes.

The Court: (Continuing)—that is, the different emphasis that was placed upon the issues in the case. For that purpose it will be received subject to your objection, Judge, so that I may consider it.

Mr. McManus: Now, Mr. Stover, will you please rise and be sworn.

FRED W. STOVER

called as a witness in his own behalf, being first duly sworn by the Clerk, testified under oath as follows:

Direct Examination.

By J. R. McManus:

My name is Fred W. Stover. I reside in Hampton, Iowa. I am a farmer. Of course, I am also engaged in farm organization work. I am the man who has been spoken of here this morning as president of the Iowa Farmers Union and of the Iowa Union Farmers Association. The U. S. Farm Union News publication which has been introduced in evidence here as Exhibits 2, 3, 4 and 5 is published by the Iowa Union Farmer Association. It is a separate and distinct corporation from the Iowa Farmers Union. The two organizations have entirely separate boards of directors; one board of directors for the Iowa Union Farmer

Association; another board of directors for the Iowa Farmers Union. There are no interlocking or no one of the directors that is a director of both. The two separate corporations have no common membership on the boards. I am president of both. The defendants were represented in this case originally by George Cosson and Clarence Cosson as our attorneys. They are still acting as attorneys of record in the case in the United States Court of Appeals for the 8th Circuit.

I recall having a meeting of the board of directors of the Iowa Union Farmer Association in the month of March, 1956, in Des Moines, Iowa. I was present at that meeting. All of our board were present. There were other members there, other officers, and even some members who were not directors. Mr. Cosson was there. He addressed our board at that time. There were several meetings held at that time. One was held over at the Elliott Hotel and another one in the Plaza Hotel. One was a regular quarterly meeting and the other was a special meeting. They were held at different times during the month. I can't remember the dates they were held but our regular March meeting is usually held on the second Monday of the month, and unless there are special reasons why certain of them can't come, so I presume that was the date. The regular meeting was held at the Elliott Hotel in March, 1955, which was shortly after this suit was instituted. It was held in the Elliott Hotel. Mr. Cosson addressed that meeting.

Q. And what did he tell you at that time?

Mr. Miller: That is objected to as in no way binding on the plaintiff, entirely collateral to any of the issues in this case, and an attempt, an apparent attempt to impeach the judicial proceeding of the trial of the main case.

The Court: Well, it bears on the subject of his motive, I take it, upon advice of counsel.

Mr. McManus: It is offered as an exception to the hearsay rule as bearing upon his state of mind, and intent, and advice of counsel.

The Court: I will overrule the objection at this time. That was Iowa Farmers Union, was it?

The Witness: Yes.

Mr. Miller: May I have a further objection that advice of counsel is not a defense in contempt proceedings.

Mr. McManus: It isn't contended that it is a complete defense.

The Court: I think it would bear, would it not, however, upon his purpose and upon what he did, in mitigation of damages, or in mitigation of the wrong.

Mr. Miller: It might be in mitigation, but it is no defense.

The Court: No, it would not be a defense. The objection will be overruled at this time and then I can look into—

Q. Now will you proceed. A. Mr. Cosson told the board at that time, and advised the board that we change the name to the Iowa Farmers Union, and that we at no time should represent that we were affiliated or spoke for the National organization. And he gave us this advice because of a pretrial conference they had held before Judge William Riley.

The Court: This was a meeting of Iowa Farmers Union, was it?

Mr. McManus: That's right. The board of directors of Iowa Farmers Union, held in March, 1955.

Q. Now, what further matters were brought to your attention at that time by Judge Cosson in connection with what he told you had transpired or been said at the pretrial conference?

Mr. Miller: May I have the same objection stand as to all this line of testimony?

The Court: You may. It is understood that the same objection will run to it all.

A. Well, he told us that if we would do that, change our name and not represent that we were affiliated with the National, and not use the full name, Farmers Educational and Cooperative Union of America, Iowa Division, which implied affiliation, then he said there probably wouldn't be a law suit, and he said that Judge Riley had said that in that event there probably wouldn't be a suit, and that it would be a moot case.

Mr. Cosson also told us at that conference that we were in no way to claim to represent or speak for the National organization. I had not attended the pretrial conference so that all that I knew about what transpired there was what I was told by Mr. Cosson on that occasion. I believed what he told me. We relied on it and we followed the instructions. Immediately after that we prepared a letter. Our board prepared a letter for the membership, and that was published in the April issue of our paper in which we instructed all of our members and officers accordingly, and told them that in no wise should they claim that we were affiliated and in no wise should they pretend to speak for the National Farmers Union. I have a copy of that issue of our publication here.

Defendant's Exhibit "C" Marked.

Exhibit "C" is the April, 1955, of our paper issued by the Iowa Union Farmer Association. On page 7 of Exhibit "C" the matter appears that I told you about which I said was published following the meeting of the board in March prior to the amendment of the articles in September. ~~I have taken~~ a pen at your request and put a couple of marks across the upper lefthand corner of page 7 to bracket and enclose the matters that I mentioned, for the convenience of the court. The portion that I referred to that we sent out to the membership instructing them that they were no longer to make any claim that they were a part of, or affiliated with, the National Farmers Union, appears in the upper lefthand portion of page 7 of Exhibit "C".

Mr. McManus: Now we offer in evidence that part of the paper, Exhibit "C", appearing in the upper lefthand corner of page 7 thereof, which the witness has enclosed with a pen and ink outline.

Mr. Miller: That's objected to as a self serving declaration; no way binding on the plaintiff, and made prior to the entry of the decree herein, and in no way effective to in any way impeach that decree or modify it in any way.

The Court: Well, I assume that it is a part of a general plan of proof, and it will be received subject to the objection, with the right always reserved to counsel to move to strike it out later.

That publication, Exhibit "C", was caused to be sent to all of the Iowa Farmers Union membership in Iowa at or about the time the publication was made. In September we amended the articles of incorporation and accomplished the change of name of that defendant to Iowa Farmers Union.

Q. What was the purpose of sending out that information contained in Exhibit "C", that we have heretofore offered in evidence, to your memory?

Mr. Miller: Same objection. Calling for an opinion and conclusion of the witness.

The Court: That calls for the identical answer he made a while ago, doesn't it?

Mr. McManus: That's right.

The Court: The objection is overruled at this time.

A. Well, the purpose was—as I said, we couldn't very well—we didn't know how we could legally change the name and change it at the Secretary of State's office except by the way our constitution and by-laws are set up, only the convention can change the name. The board action and the letter to the members was a recommendation which, as far as I know, was followed. Our annual meeting was set up to be held in September. At our September meeting we accomplished the necessary legal proceeding to change the name. We didn't know how we could have done that prior to September, 1955, without great expense. At and prior to June 15, 1956, the Iowa Union Farmer Association published this paper, Exhibit "C", under the name of Iowa Union Farmer. After June 13, 1956, there was a change made in the name of the paper issued and published and distributed by the Iowa Union Farmer Association. We called a meeting of the board of directors and they changed it. We changed the name to U. S. Farm Union News immediately after June 13, 1956.

Q. And what was the purpose of changing the name of the publication, if you know?

Mr. Miller: Same objection as heretofore urged. Calling for an opinion and conclusion of the witness, and not binding on the court. Incompetent.

The Court: Well, since he is the one charged with contempt, I think he would have a right to say what was done. The objection will be overruled at this time.

A. There were a number of reasons why we changed it, one of which, of course, was to make sure that in no way could we be accused of violating the injunction.

Q. What were the other reasons, if you know?

Mr. Miller: Same objection.

The Court: The objection is overruled at this time.

A. Some of the reasons were explained in that issue of the paper.

I refer to that issue which is known in this record as Exhibit 2. It was because of expanding it that we thought it would be better to use the name U. S. Farm Union News. We wanted to give the scope of the coverage a broader connotation than the boundaries of Iowa. In the initial issue of the U. S. Farm Union News, which has been marked in this record exhibit 2, under the name of the publication which appears in bold type at the top of the first page there appears in parenthesis below it, "Formerly Iowa Union Farmer." I see that on the first page of Exhibit 2.

Q. Do you know the purpose of putting the words that I have read below the name U. S. Farm Union News on the first page of the initial issue of your publication known as Exhibit 2?

Mr. Miller: Same objection as heretofore urged.

Mr. McManus: Wait a minute, please, Frederic. Will you do me the kindness to read the question.

(The pending question was read back to Mr. McManus).

Mr. Miller: Same objection as heretofore urged to this line of questioning.

Mr. McManus: Just answer yes or no.

The Court: Objection overruled at this time.

Q. Just answer yes or no.

The Court: You asked him what the purpose was?

Mr. McManus: Yes.

The Court: He couldn't answer that yes or no.

Mr. McManus: I am asking him what the purpose was.

The Court: Yes.

Q. What was the purpose, if you know?

Mr. Miller: Same objection.

The Court: Overruled at this time.

A. The purpose was to show the members and the people who had paid for the Iowa Union Farmer that this was replacing the Iowa Union Farmer.

The Court: Are you at a point where we might suspend?

Mr. McManus: Yes, your honor, we are.

Further Direct Examination.

I am Fred W. Stover, the respondent in this proceeding, who was on the stand at the time the court recessed at noon. Following the entry of the decree in the case at bar, I became aware of its contents. I also became aware of the memorandum of opinion filed by the presiding judge, Roy Harper, in this court in this case on May 26, 1956. I read it. Following the entry of that decree, I conferred with our counsel, George and Clarence Cosson. They are still my counsel in these cases. In addition to the Farmers Union litigation they are also our attorneys in another case that is very important that they have been busy on, and furthermore, at the time of receiving the decree from Judge Harper, they questioned whether they would have time to handle all of the cases, and we particularly wanted someone that was acquainted with trade name litigation. Since the entry of the decree they have been engaged for some time on a libel case. That case is now pending on application for a writ of certiorari to the Supreme Court of Iowa from the Supreme Court of the United States. They have been and still are engaged in that case.

Q. Now you say that you conferred with those gentlemen following the receipt of the decree in this case and the memorandum opinion that I referred to, and as a result of that conference what, if anything, did you do with respect to obtaining further advice with respect to how you should proceed concerning the decree that had been entered in this case?

Mr. Miller: May this line of testimony be subject to the same objection as heretofore—

The Court: Yes, it may, Judge. The same objection, I think, however, it would be competent. I'm not ruling on that because I want to look into it further. On the question of the purpose, don't you know, and the question of punishment if it is found that he is guilty of contempt.

Mr. McManus: It is also offered as bearing on the question of his state of mind, and intent, your honor.

The Court: Yes.

Q. Now will you do me the kindness to answer my question. A. It was recommended that we get an attorney who was acquainted with trade name registration, and had experience in it, and Mr. Riley McManus was recommended to us for having taken cases to the Circuit Court of Appeals, and I remember one case, Beneficial Industrial Loan Corporation vs. Kline that he had handled so we consulted Mr. McManus in the matter and he gave us advice as to what to do.

Pursuant to suggestions from Mr. Cosson I called on Mr. McManus. I brought with me and gave to him all material we had on the case, the pleadings and briefs and copies of the memorandum opinion and the decree. You gave us an answer on the matter. I forget now within what time it took you to read. I don't remember, it was shortly thereafter. I got an opinion from you the day I called on you. You read the decree and you said you wanted to read all the matters pertaining to it, and some cases. I forget now how many days later we talked to you again. I came back to see you later. You told us that apparently the trade mark was mainly in litigation—in litigation involving a trade mark, and that you told us that as long as we just used the trade name Iowa Farmers Union and didn't use the trade mark, we would be alright. I think I recall upon the occasion of my second visit your reading to me aloud the language contained in the opening paragraph of the memorandum opinion filed in this case by Judge Roy W. Harper, the presiding judge who was sitting by assignment in this case. I remember your calling my attention to the original complaint, a copy of

which I had furnished you. I remember your calling to my attention the original memorandum brief which counsel for plaintiff had given to Mr. Cosson at the time of the filing of the complaint. I distinctly remember your calling my attention to the fact that in those last two documents that I have mentioned there was frequent repetition of the term or expression "trade names", which appeared therein. I remember your calling to my attention the final brief in the case presented by counsel for the plaintiff to the court and counsel on or about March 1st, 1956. I remember that you read aloud to me the first paragraph of Judge Harper's opinion when I was seeking advice from you as to what course I should pursue in an attempt to avoid violating the decree. The language referred to read as follows: "This action was brought by Farmers Educational and Cooperative Union of America, a Texas Corporation, against Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, et al., to enjoin the defendants from an alleged infringement of three of plaintiffs' trade marks, all of which are registered on the principal registers of the United States Patent Office. The trade marks are: One, a symbol and service mark consisting of a plow, rake and hoe, surrounded by a circle; Two, a collective mark for goods consisting of the words "Union Farmer", used for newspapers published by the plaintiff and its divisional organizations, and; Three, a service mark consisting of the words "Farmers Union", used by plaintiff in the sale and advertisement of services. I also recall your reading to me at the same time this language from that memorandum opinion which appears on page 41 of Exhibit 1 "Jurisdiction is conferred upon this court by the Lanham Act, under which the suit is brought." Following that you gave expression to me as to the views of the law concerning the matter of the corporations' use of the trade names "Iowa Farmers Union" and "Iowa Union Farmer Association". You said those were both trade names and that Judge Harper had mentioned this litigation involving infringement of trade marks, and that using those names would not be a violation of the injunction.

I was familiar at that time with the distinctive type and style and lettering used subsequent to the registration of the trade mark "Union Farmer" as it appears in Exhibit I-3 which has been admitted in evidence in this case. I certainly was familiar at that time also with the type and kind and style of distinctive printing used in the letterheads of the National Farmers Union prior to the registration date of these trade marks. Subsequent to my final conference with you I called our board of directors of the Iowa Farmers Union and the board of directors of the Iowa Union Farmer Association to a meeting shortly after June 13, 1956. We had a full attendance of the board at that time. The meeting was held at 517 Keo. I presided. At that time there was exhibited there the papers that I mentioned a while ago, the complaint, the pleadings, the memorandum opinion and findings of fact and conclusions of law and decree of Judge Harper and we went over all those things carefully. Our meeting lasted a long day. We were until late in the evening.

Defendants' Exhibits "D", "E", "F" and "G" Marked for Identification.

Exhibit "D" was received by me in the usual and ordinary course of the United States mail. It is an example of the type of letterhead and style and type of printing in use by the National Farmers Union prior to the adoption of these registered trade marks in 1954.

Exhibit "E", as I understand it, is the service mark after the National Farmers Union got their copy-right. Exhibit "F" contains the typical way in which the paper was set up on the National Union Farmer prior to the adoption of these trade marks. Exhibit "F" is a copy of the National Union Farmer. Exhibit "G" in the upper lefthand corner of the front page of that newspaper contains the kind of mark usually found on plaintiffs' newspapers after the registration of its trade mark. Exhibit "G" is a newspaper issued under the direction and supervision of the Farmers Educational and Cooperative Union of America, the national organization.

At this meeting of the board held shortly after June 13, 1956, this matter was discussed as to how our board and organization should proceed for purposes of avoiding

coming in conflict with our violating the terms of the decree in this case. These various papers that I have mentioned were exhibited to and read at that board meeting. The primary purpose and reason for that meeting was to consider the opinion or injunction decree handed down by Judge Harper and to decide what we could do in the meantime while it was on appeal and we wanted to make sure that we didn't do anything that would give anyone reason to accuse us of violating the injunction. At that time I told the board the opinion you have expressed to me with respect to the use of the two trade names. That matter was discussed at length at that meeting.

Q. Now at that time, Mr. Stover, did you resort to some outside medium for information other than what I had told you and what you had there in the room? A. Well, all the directors had a contribution to make after we studied the matter. Incidentally, one of them had a dictionary, an American College Dictionary, and he read the dictionary definition. That, in a layman's language, seemed to clear things up better than anything else.

Mr. Miller: We move to strike this last answer for all the reasons urged in the standing objection, and particularly for the reason that it does not lie with the defendant at this time to impeach the judgment of Judge Harper. Now as I understand it, all of this goes to watering down the language of the injunction, and I take the position that right or wrong, they have got to comply with the injunction as it was written.

The Court: You are exactly right. However, they are trying to put—if they did put an honest interpretation upon it and believed that what they did was not in violation of the injunction, that would be one thing, even though they did violate the injunction.

Mr. Miller: I just wanted to preserve my record.

The Court: Exactly.

Q. Was the dictionary brought in? A. Yes.

Q. Was the definition of trade mark read? A. Yes.

Q. And you have with you a copy of what was read there at that time? A. Yes.

Q. Will you produce it please?

(Witness produced document which was marked Defendants' Exhibit "H" for identification.)

Q. Will you please examine this set of papers which the court reporter has marked for identification as Exhibit "H" and tell us what it is, if you know? A. That is the definition of a trade mark and a trade name as taken from the American College Dictionary.

Q. And who made Exhibit "H", who copied it? A. I did.

Q. And is it truly and correctly copied by you from the American College Dictionary that you have mentioned? A. Yes.

Q. And does Exhibit "H" contain the definitions which were read to the board at your meeting shortly after June 13, 1956? A. Yes.

Q. And you say that you laymen were better able to comprehend and understand the language of the dictionary than what we lawyers told you, is that right? A. Well, that was very clear, at least, to us.

The members of the Iowa Farmers Union own the assets of the defendant, Iowa Farmers Union. The assets of the Iowa Union Farmer Association are owned by the members of that association. There is a separate membership between the Iowa Farmers Union and the Iowa Union Farmer Association. The members of the Iowa Farmers Union pay us $7.50 annual membership. The membership of the Iowa Union Farmer Association pay $10.00 membership. In some cases they overlap. In other words, they are members of the Iowa Farmers Union and are also members of the Association, but not all of them.

The membership in each of the corporate defendants, the Iowa Farmers Union and the Iowa Union Farmer Association are separate and distinct memberships. Each member in those corporations own the assets of which they are members. They have no interest in the other corporation unless they happen to be also members of it. The newspaper publication now known as the U. S. Farm Union News is published by the corporate defendant, Iowa Union Farmer Association.

Q. And with that publication the defendant Iowa Farmers Union has nothing to do? A. That's right.

Mr. Miller: Well, that is objected to as calling for an opinion and conclusion of the witness and incompetent. The record speaks for itself.

The Court: As to whether they have anything to do with that phase of it?

Mr. Miller: Yes, they all get copies of it.

The Court: That is whether they are members—

Mr. Miller: Yes, Your Honor.

Mr. McManus: Well, I move to strike out that statement just made by counsel as not evidentiary.

The Court: What counsel says on both sides is not evidence, of course.

Mr. Miller: He already testified that he sent that to members of the Iowa Farmers Union.

The Court: That is, he sent it to both members.

The Witness: (Interposing) There is a contract, an agreement between the Iowa Farmers Union and the Iowa Union Farmer Association in which one of the stipulations is that a copy will be furnished upon the payment of a certain amount of money per month.

Q. And is that certain amount of money per member a subscription price? A. It is one dollar.

Q. So that paper goes to whoever pays a subscription price, whether they are members of either organization or not, is that correct? Is that a fact, Mr. Stover? All I want is the truth of the facts. A. Yes.

We had that meeting and discussed this matter and read this dictionary definition and went over those papers and thereafter changed the name of the newspaper. We changed the name from Iowa Union Farmer to U. S. Farm Union News. Counsel advised us that it might be better to change the name of the newspaper and the board agreed that we better change it in order to make doubly certain that we wouldn't be confused—there would be no question about confusing our publication with any other publication. We also wanted to avoid violating the decree. We had used the name Iowa Union Farmer Association since the summer of 1952.

Q. Now had you ever at any time in any of your publications imitated or attempted to reproduce the same dis-

tinctive type or style or print used in the registered mark to which your attention has been called in any of your publications? A. No, we have not.

Mr. Miller: That is objected to for all the reasons heretofore urged. It doesn't lie in the hands of these defendants to impeach the decree of Judge Harper.

The Court: Well, I believe that is correct. However, the first part of the question probably calls for a conclusion of the witness, but he can tell what he did in respect of imitating what had gone before.

Q. Well, in compliance with the suggestion of the court, have you ever at any time attempted to imitate the trade mark of the plaintiff?

Mr. Miller: Same objection.

A. No, we have not.

Q. Now does the Iowa Farmers Union or the Iowa Union Farmer Association sell or produce or manufacture or deal in any commodity or thing or article of commerce? A. None whatever.

Q. And so you have never used any trade mark attached or affixed to any merchandise or commodity or products at any time, is that true? A. No, we haven't.

Mr. Miller: That is objected to as calling for an opinion and conclusion of the witness. The newspaper is certainly a commodity and they have certainly attached their name to that and we don't know just what their opinion is as to what else might come as a commodity.

Q. Aside from your newspaper publications of Iowa Union Farmer Association, have you issued or published or dealt in or produced any other commodity or merchandise? A. Nothing that we would call a commodity or merchandise. We did mail out a small circular.

Q. That is you mailed out literature and other matters containing the name Iowa Union Farmer? A. No.

Q. Containing what name? A. U. S. F. U. News, with my name as editor.

Q. Oh, U. S. Farm Union News. All right. Now, aside from these publications and this literature, have you affixed or attached the name Union Farmer or Farmers

Union to anything else except publications? A. No, we haven't.

Q. And you have never bought, sold, traded or dealt in any other type of merchandise at any time, is that correct? A. We have not, that's right.

To my personal knowledge from time to time since March, 1954, there have appeared in newspapers of general circulation in Iowa articles dealing with the fact that there was no longer any connection or affiliation between the Iowa Farmers Union and the National Farmers Union, hundreds of them. From time to time there have also been radio broadcasts in Iowa concerning the same subject and in addition to that I think there have been some TV programs broadcast dealing with that subject.

Q. Now by means of the daily press, radio broadcasts, TV broadcasts, would some of these mediums of communication be likely or probably to reach all of your membership from time to time?

Mr. Miller: Now that is objected to for the reason that it is trying to impeach the decree of Judge Harper. Judge Harper found that there was confusion and that they were in competition with us, and I cannot see how this testimony has any bearing on any issue except to try to impeach that decree, and I insist that it isn't proper.

The Court: Insofar as it may undertake to do that, of course, it would be improper.

Mr. McManus: We recognize that, Your Honor. We are not trying to do that.

Q. Do these radio broadcasting stations in Des Moines extend to and reach to all boundaries in Iowa, if you know? A. I think they do.

Q. And do you have any idea or opinion with respect to the circulation of the Des Moines newspaper known as the Des Moines Register and the Des Moines Tribune? A. I think they have a circulation of nearly a half-million of the Sunday Register and I forget what the daily Register and Tribune circulation is but it is considerable.

Q. How old are you? A. 58.

Q. Now have you ever at any time had or entertained any intention to disobey or violate the decree of Judge

Harper in this case which was made and entered of record June 13, 1956?

Mr. Miller: Same objection as heretofore urged to the line of testimony.

The Court: Very well. The same ruling. He may answer.

A. Most certainly not. That was the reason for our board meeting and our long discussion, to make sure that we avoided it.

Q. And did you have that end in mind also in conferring with counsel? A. Yes.

Q. And in your subsequent course of conduct, did you follow and rely upon advice of counsel? A. Entirely.

Q. And the counsel were these three lawyers whose names have been mentioned? A. Yes.

Q. At any time subsequent to the board meeting in the summer of 1956, did you think that the injunction did or did not prohibit the use of the trade name "Iowa Farmers Union"? A. We didn't think it did.

Q. And did you think that it did or did not prohibit the use of the trade name "Iowa Union Farmer Association"? A. We didn't think so.

Mr. McManus: Now in connection with the examination of this witness the defendant offers and introduces into evidence Exhibits "A", "B", "C", "D", "E", "F", "G" and "H" identified in the examination of this witness. Exhibit "H" is offered, your honor, purely as bearing upon the intent and state of mind of the defendant, Fred W. Stover, and not as probative proof of anything except that.

Mr. Miller: We object to the exhibits for all the reasons urged in our objection to this line of testimony, your honor, for which I understand we have had a standing objection.

The Court: Yes, that is correct. They are received subject to the objections. I will receive them subject to the objections.

Cross Examination.

By Frederic M. Miller:

Our name Iowa Farmers Union had ~~been~~ adopted by the corporation at the time of the trial of the case here before Judge Harper, on advice of counsel.

Q. Well, have you changed the method of operating the Iowa Farmers Union in any way since the decree was entered? A. I am not sure what you mean.

Q. Well, you were operating the same since the decree as you did before, are you not? A. Perhaps so.

Q. You don't know of any difference? A. What is your question?

Mr. Miller: Will you read the question to him?

(The pending question was read back to the witness.)

A. Not particularly.

Q. And as far as the Iowa Union Farmer Association is concerned, you changed the name of the publication to U. S. Farm Union News, but did you make any other change in your method of operating that association? A. I don't think so.

I have been here in the trial of this case this morning and this afternoon. It has been stipulated that I have written the editorials in this U. S. Farm Union News. That is correct. Page 2 of Exhibit 2 does not contain an editorial. That was prepared at our board meeting. I had something to do with it, certainly, but it was not an editorial. It is published under my direction. I took it to the printer. The heading says "Message from your State Board", and it is signed by IFU Board. I agreed with it. I probably furnished some of the information from which it was prepared, got it from various sources.

Q. Well, for instance this paragraph here—"Here is an explanation of what happened. Shortly after the suit was started, the lawyers met for a pretrial conference with Judge William Riley, who is the judge for the U. S. Southern District of Iowa. Our attorneys agreed not to use the trade mark and symbols, not to use the name 'Farmers Educational and Cooperation Union of America, Iowa Division,' and not to claim that we represented the N. F. U. Thereupon, Judge Riley commented that if that were done

there probably wouldn't be any trial, it would be a moot case. This apparently did not satisfy the N. F. U. officials, who quite obviously wanted us put clear out of business, but there the whole thing hung until February of this year when the case was finally docketed. Unfortunately at that time Judge Riley was ill in the hospital. Judge Roy Harper, of Missouri, a Truman appointee and a friend of Charlie Brannon, was assigned to hear the case. He knew nothing about the case before, about the pretrial conference and discussion that had been held before Judge Riley. It seems that he paid no attention to our answer, our briefs in argument, and the testimony. His excuse seemed to be that we conceded the legality of the charter revocation, and therefore, all the long record of N. F. U. affairs had no bearing." You knew about that, did you not? A. I certainly did.

Q. And you subscribed to it, did you not? A. I did.

Q. You furnished the information from which that was written, didn't you? A. That information was taken from the briefs and from the discussion of the board.

Q. Which you agreed with? A. And from the report of Mr. Cosson in the pretrial conference.

Q. And you were in charge of the publication of this issue, were you not? A. Yes.

Q. Now I call your attention to page 4 of what the reporter has marked Exhibit 5. Is that the editorial page of that paper? A. Yes.

Q. So that this article is an editorial on organizational durability? A. That's correct.

Q. And this paragraph: "The fraternal organization now past forth is not going to fold up in spite of all the injunction suits that Patton and his chore boys in Iowa are using to arrest and retard the organization." You wrote that, did you not? A. I did.

I supervised the publication of Exhibit 9. In the first complete paragraph in the lefthand column on the last page of the circular where it says "Members of the Iowa Farmers Union are of course automatically paid subscribers to the U. S. F. U. News" means that the Farm Union News goes to the members of the Iowa Farmers Union by virtue of

the contract and agreement between the two boards. I used the word "automatic". I still stand by it.

Re-Direct Examination.

By J. R. McManus:

Q. Counsel called your attention to an article in Exhibit 2, being the May-June issue of the Iowa Farm Union News, and read to you a paragraph at the bottom of page 2 of this publication which commenced with the sentence, "Here is an explanation of what happened," and which ended with the sentence, "His excuse seemed to be that we condoned the legality of the charter revocation. Therefore, all the long record of N. F. U. interference in I. F. U. affairs had no bearing," did he not? A. Yes.

Q. Now in that statement there is set forth in the bottom paragraph in the first column on the lefthand side of page 2 of Exhibit 2 and at the top of the next column this matter you told us about this morning that had been reported to you by Mr. Cosson as a result of a pretrial conference. A. Uh Huh.

Q. Now then, you say following that "Unfortunately, at that time Judge Riley was ill in the hospital." Now that sentence referred to the time the case was reached for trial, did it not? A. Yes.

Q. And Judge Riley was ill at the time the case was reached for trial, and Judge Roy Harper of Missouri presided. Now, from whom did you get your information that he was a Truman appointee? A. From Mr. Cosson.

Q. And from whom did you get the information that he was a friend of Charlie Brannon? A. From Mr. Cosson.

Q. And Charlie Brannon is also the Charles F. Brannon who is one of the lawyers in this case? A. Yes.

Q. And in the next sentence you say, "He knew nothing about the case before." You are referring there to Judge Harper? A. Yes.

Q. And so far as you knew that was true, was it not? A. That's right.

Q. "About the pretrial conference and the discussions that had been held before Judge Riley." Now all of the

pretrial conference had not been made a part of the record, had it? A. I understand not

Q. So, so far as you knew, when you made that statement it was true, wasn't it? A. Yes.

Q. The next sentence, "It seems that he paid no attention to our answer or briefs and argument or testimony." In that sentence were you giving expression to your own honest beliefs and opinion? A. Well, I think that came out of the fact that a lot of our board members wondered why none of the cases cited in our briefs were mentioned.

Q. In the judge's opinion, you mean? A. In the opinion.

Q. But in any event, aside from that were you giving expression to your own honest opinion and the honest opinion of the board that it seemed that the judge didn't pay any attention to your briefs and answer, argument, or testimony?

Mr. Miller: That is objected to as leading and suggestive.

Mr. McManus: Well, perhaps it is. I withdraw it if that objection is made.

Q. What was the purpose and intent of making the statement I just read? A. Well, actually the whole—most of that was rather instead of taking what the application called a contumacious attitude, it was trying to explain perhaps why Harper made the decision. If he had been in the case beforehand in place of Riley, why he would have had the full knowledge of everything, and I would think it was in Harper's favor rather than against him, because we were trying to explain perhaps why he so ruled.

Q. In other words, you were trying to explain his unfamiliarity with the case, and that is your explanation of that language? A. (Witness nods head.)

Q. Did you rely on the statement of Mr. Cosson with respect to Judge Harper's appointment by President Truman and Harper's acquaintance with Brannon? A. Yes.

Q. Now in connection with that publication that counsel referred to did you or the board have any intention to defy

or violate the decree of the court in this case? A. Most certainly not.

Q. On the contrary, were you trying to explain to your membership some reason or basis for the opinion? A. That's right.

MRS. EDNA UNTIEDT,

called as a witness in behalf of the defendant Stover, being first duly sworn, testified as follows:

Direct Examination.

By J. R. McManus:

My name is Mrs. Edna Untiedt. I live in Dixon, Iowa. My husband is a farmer. I am a housewife. I live on a farm. I am a junior leader of the defendant Iowa Farmers Union. I am a member of the defendant Iowa Union Farmer Association. I pay my dues, my $10.00 dues. In 1955 and 1956 I was not a member of the board of directors of either or those organizations but I was a member of each organization. I recall hearing the testimony given here today by Mr. Stover with respect to a board meeting held here in Des Moines in the spring of 1955 at which time there was discussion with respect to the change of name of the defendant Farmers Educational and Cooperative Union of America, Iowa Division, to Iowa Farmers Union. I attended that meeting. Mr. Cosson was there. He addressed the meeting. The board was there.

Q. And what did Mr. Cosson tell you at that time and place?

Mr. Miller: Now, your honor, may I have a standing objection to this line of testimony the same as heretofore posed to this line?

The Court: Yes, you may. I will receive it subject to that objection.

A. Mr. Cosson mentioned the fact that they had a pretrial conference held in the U. S. District Court before Judge William Riley. He told us that Mr. Riley had said that if we would change the name from Farmers Educa-

tional and Cooperative Union of Ameria and just use the words "Iowa Farmers Union" that we would need not—there probably would be no trial; it would be a moot case.

I think he told us that we had to do something else in addition to changing the name. He said that if we would claim that we were no longer affiliated with the National Organization and would carry that out over the state and not to use any affiliation with the National Farmers Union in our membership drives or anything to say we were affiliated with them. He asked us to refrain from speaking or being represented with the National Farmers Union. Following and as a result of that meeting the corporate name was changed to Iowa Farmers Union. Under our charter and by-laws our annual meeting was held in September, 1955. At that time we accomplished a change in the name. That was an attempt to comply with the suggestion made by Judge Riley, as reported by Mr. Cosson. It couldn't be done before. The next matter that came up with respect to the change of name was the change of name to U. S. Farm Union News. I attended that meeting. I think it was discussed. That was in the summer of 1956 following the decree. I attended the board of directors meeting, not the association meeting. At that board of directors meeting in the summer of 1956 that has been described by Mr. Stover in his testimony and detailed here, I was in attendance at the Farmers Union board of directors meeting. It started at 10 o'clock in the morning and lasted late in the evening. I recall Mr. Stover being there and presenting to that meeting the material that he mentiond here today.

Q. And do you recall him reciting to the board the legal opinion to which I had given expression with respect to the use and distinction between trade marks and trade names? A. I do.

Mr. Miller: Your honor, I object to this as purely cumulative.

The Court: Yes, it is cumulative.

Mr. Miller: In a matter that we are not going to dispute at all except as to its relevancy.

Mr. McManus: Well, in view of that statement there is no use in me pursuing this line of examination any further. I simply wanted to—

The Court: Corroboration I don't think is necessary.

Mr. McManus: Yes. Very well, your honor. In view of what your honor has said and the concession of counsel, I don't think that it is essential that I pursue this matter further, but there is one matter that hasn't been covered that I was going to ask about.

Q. Do you recall talking to James D. Patton, president of the National Farmers Union at Denver, Colorado in a hotel there in March, '54?

A. Yes, at the Shirley Savoy Hotel.

Mr. Miller: This is objected to as a collateral matter prior to the entry of the decree. This was in 1954, two years before the decree.

The Court: Unless it leads up to something—

Mr. McManus: I think it is, your honor. It is preliminary. It won't take very long.

The Court: On your suggestion that it will lead up to something.

Q. Do you recall what that conversation was? A. Yes.

Mr. Miller: Same objection.

A. It was the Monday following the National board meeting, and in the afternoon. I talked to Mr. James Patton in the lobby of the Shirley Savoy. I told Mr. Patton —I said, although they had taken steps to try to revoke our charter, I was going home and I was going to organize the Iowa Farmers Union. Mr. Patton patted me on the back and he said, "Go ahead, Mrs. Untiedt." He said, "That is wonderful. Go ahead." I says, "Mr. Patton, I am not organizing for the National Farmers Union, I am organizing for the Iowa Farmers Union." He said, "That is just fine, Mrs. Untiedt." He said, "Go right ahead and organize for the Iowa Farmers Union." So thereby I was given permission from Mr. Patton at that time to organize for the Iowa Farmers Union.

Mr. Miller: We move to strike all that testimony as obviously an attempt to impeach the decree that Judge Harper issued.

The Court: Of course it is a thing they could not do.

Mr. McManus: We don't undertake to do that, your honor.

Q. And at that time of the conversation that you have just related was James D. Patton president of the Plaintiff? A. He was.

Mr. McManus: That's all.

Mr. Miller: No cross examination.

(Witness excused.)

Mr. Miller: At this time as a part of the cross examination of Mr. Siover, we offer in evidence Exhibit 9.

Mr. McManus: No objection on our part to the admission of Exhibit 9.

The Court: Very well.

Mr. McManus: The defendant rests, your honor.

Mr. Miller: No rebuttal, your honor.

Mr. McManus: Then at this time if it would be proper, I would like to make a motion if I may, your honor.

The Court: Very well.

Mr. McManus: The defendant now moves to dismiss this proceeding for the reason that there is no competent proof of wilfulness or of any intent upon the part of the defendant who stands charged of disobeying or violating the decree entered on June 13, 1956.

Second, this is a civil contempt proceeding, deemed to be for the benefit of the plaintiff, and there is no proof of damages and in the absence of such proof any award would be based on conjecture and speculation and would be without any factual basis in this record, and without support in the evidence. So that there is no proof of damages before the court which would constitute or form any basis for the entry of any judgment in favor of this plaintiff.

Three, the plaintiff has failed to make out a case or meet the burden of proof, or establish by a preponderance of the evidence the essential allegations of his application; and there is no proof which would warrant the court under this evidence and this record of finding the defendant guilty of the accusations made in the application for citation for contempt.

For each and all of these reasons the defendant moves the court to make an order finding that the defendant is innocent of the accusations made in the application, and that he has purged himself of the charge of contempt, and that the application of the pl ntiff as amended be dismissed.

The Court: That will be taken with the case. I think on the question of damages, in civil contempt the court would have a right to impose such penalties as would compel a compliance with the decree, or to in some cases even put one who has been cited in jail until he will comply with the order of court.

Mr. McManus: There are authorities on the question that I have brought to your attention.

The Court: Yes, I know.

(Colloquy regarding submission of briefs.)

(Case finished—court adjourned.)

(Memorandum Opinion on Question of Contempt and Citation Against Fred W. Stover.)

(Filed in United States District Court on March 28, 1957.)

On June 11, 1956, Judge Roy W. Harper, the trial judge in the above case, entered his decree, in part as follows:

"* * * that the defendants, Iowa Farmers Union (formerly Farmers Educational and Cooperative Union of America, Iowa Division), Iowa Union Farmer Association, Fred W. Stover * * * and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, 'Union Farmer', in connection with the printing publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, 'Farmers Union,' * * * in connection with dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment pro-

grams, for farmers and their families, * * * the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly, attempting to compete with the plaintiff in its use of said trade marks."

On September 10, 1956, the plaintiff applied for a contempt citation against Fred W. Stover "for willful violation of the injunction issued as a part of the final decree in this cause * * *."

It was then charged that, subsequent to the entry of the decree the said Fred W. Stover, in his capacity as president of the Iowa Union Farmer Association, solicited contributions for the Iowa Union Farmer Association and that, at the same time, he published various articles which demonstrated a willful and deliberate defiance of the court's decree. Other averments of the application were designed to show an intention on the part of the respondent to disregard and disobey the injunctive relief granted by Judge Harper.

On December 10, 1956, the plaintiff filed an amended application for a contempt citation and made this additional charge:

"That the publication and distribution of a newspaper entitled U. S. Farm Union News (formerly Iowa Union Farmer), * * * was denominated the May-June 1956 issue of said newspaper * * *."

And, further, that the said respondent, in his capacity as president of the Iowa Union Farmer Association supervised the publication and distribution of said newspaper and subsequent issues, and that contributions were solicited for the "Iowa Union Farmer Association" by the respondent.

As said in Jarvaise, etc., v. St. Paul Institute of Cosmetology, 237 N. W. 183, l. c. 185:

"The name of a newspaper is in the nature of a trademark * * * Seabrook v. Grimes, 107 Md. 410. * * *."

In the trial there was practically no controversy as to the actual facts in the case. That the publications were made

as charged by the plaintiff, and that the defendant supervised and controlled such publications was not disputed. In the evidence, as well as in briefs of able counsel for the respondent, the thought was expressed and contention made, that the injunction of Judge Harper did not enjoin the use of a trade-name, and, that, since the plaintiff only enjoyed rights on its registered trade-mark, there was no violation of the court's order.

1. It should be noted that the law of trade-names is identical with that of trade-marks. Trade-names, as such, are not registered. Any rights that may accrue in a trade-name are by reason of the fact that such trade-name becomes, in law, a trade-mark. Trade-names have been frequently confused with trade-marks, and, broadly considered, they do include names which may constitute technical trade-marks. St. Louis Independent Packing Co. v. Houston, 215 F. 553, l. c. 560.

A trade-name is descriptive of the manufacturer or dealer himself and applies to a business and its good will, whereas a trade-mark, in a technical sense, is applicable to vendible commodities. Standard Oil Co. of New Mexico v. Standard Oil Co. of California, 56 F. 2d 973, l. c. 977. Katz Drug Co. v. Katz, 217 F. 286, l. c. 289.

Again, a trade-mark has reference to the thing sold while a trade-name embraces both the thing sold and the individuality of the seller. Eastern Outfitting Co. v. Mantcim, 110 Pac. 23, l. c. 25; 59 Wash. 428.

It has been held, however, that a trade-name is not strictly a trade-mark, but is generally governed as to its use by the same rules as a trade-mark. Jarvaise Academy of Beauty Culture v. St. Paul Institute of Cosmetology, 257 N. W. 183, l. c. 185, 183 Minn. 507.

2. In the case at bar, plaintiff registered its trade-marks "Union Farmer" and "Farmers Union." The evidence tended to show that the public was confused by the use of similar names by the respondent. Moreover, in using the names complained about, the respondent was of the opinion (based upon the advice of an able lawyer) that the injunction was directed against a trade-mark and not against a trade-name. Apparently the respondent believed that he

had a right to use the names covered by plaintiff's registered trade-marks.

3. The court cannot grant the relief sought by plaintiff by ordering the corporate defendant to turn over fees, dues, etc. This could only be done if the proceeding were against the board of directors.

4. That the respondent violated the injunction, there can be no reasonable doubt or question and it would follow that the court must find him guilty of contempt and subject to penalty. It should be the order of the court that, if, within ten days after the date of the filing of the order herein, the respondent changes the wording of his publication so as to eliminate, among other things, the words, "(Formerly Iowa Union Farmer)" and causes to be removed a similar sign over a place of business conducted by him for his organization, and ceases soliciting contributions as alleged and proved, and otherwise complies with the injunctive order, then a fine of $1000.00 will be reduced to $500.00.

Counsel for plaintiff will prepare and submit an appropriate order, together with proposed findings of fact and conclusions of law.

Kansas City, Missouri, March 28, 1957.

s/ Albert L. Reeves,
U. S. District Judge.
(By assignment.)

(Findings of Fact, Conclusions of Law, Judgment and Decree.)

(Filed in United States District Court on April 25, 1957.)

Be It Remembered that on the 28th day of January, 1957, this cause came on in its regular order for trial on the Citation of the defendant Fred W. Stover to show cause why he should not be adjudged in Contempt of Court and his Response thereto, the plaintiff appearing by Frederic M. Miller and Sherwin J. Markman of the

firm of Brody, Parker, Miller, Roberts & Thoma, of Des Moines, Iowa, and by Charles F. Brannan of Denver, Colorado, its attorneys of record, and the defendant, Fred W. Stover, appearing by James R. McManus of Des Moines, Iowa, his attorney of record, and the Court having listened to the testimony and the arguments of counsel and having examined the documents introduced in evidence and the written briefs submitted by counsel and being duly advised in the premises, now, in conformity to the Rules of Civil Procedure, the Court makes its Findings of Fact and Conclusions of Law and enters its Order for Judgment and Decree as follows:

Findings of Fact.

1. On June 11, 1956, Judge Roy W. Harper, the trial judge in the above case, entered his decree, in part as follows:

"* * that the defendants, Iowa Farmers Union (formerly Farmers Educational and Co-Operative Union of America, Iowa Division), Iowa Union Farmer Association, Fred W. Stover * * and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, 'Union Farmer', in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, 'Farmers Union,' * * * in connection with dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs for farmers and their families, * * * the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks."

2. As the basis for such decree Judge Harper made certain Findings of Fact and Conclusions of Law which included the following:

(a) Defendants admit that they are using the marks, namely, "Union Farmer" and "Farmers Union," and asserted that they intend to continue to use said marks unless restrained from so doing.

(b) The evidence is undisputed that the use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

(c) Plaintiff's collective mark for goods, "Union Farmer," usually used for newspapers published by plaintiff and its divisional organizations, was registered in the Principal Register of the Patent Office on November 2, 1954; and plaintiff's service mark, "Farmers Union", was registered in the Principal Register of the Patent Office on April 1, 1952.

(d) The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nationwide program.

(e) Defendants are infringing plaintiff's said registered marks in such a manner that confusion has resulted and is bound to reoccur in the future unless injunctive relief, prayed for by the plaintiff, is granted by this Court.

(f) Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and plaintiff's service mark, the aforesaid symbol of a plow, a rake and a hoe surrounded by a circle.

3. Defendant, Fred W. Stover, is the President and principal managing officer of the Iowa Farmers Union and the Iowa Union Farmer Association. He publishes and is an editorial contributor to the newspaper now known as "U. S. Farm Union News" formerly known as "Iowa Union Farmer". He is in charge of the activities of said

Iowa Farmers Union and said Iowa Union Farmer Association, including the solicitation of subscriptions, memberships, dues and contributions and is in charge of the records and headquarters of said corporations. Not only is he bound to comply with the injunction, quoted in Paragraph 1 hereof, supra, but is under the duty to so supervise and direct the affairs of said corporations that they likewise in their activities would obey said injunction.

4. The continued use of the names, "Iowa Farmers Union" and "Iowa Union Farmer Association", by said corporations, and in particular by the defendant, Fred W. Stover, has created confusion and misunderstanding in the community and directly violates the injunction. The name, "U. S. Farm Union News", is so similar to "Iowa Union Farmer" that it is deceptive and confusing and creates confusion and misunderstanding among the farm people of Iowa.

5. Except for the change of the name of the newspaper from "Iowa Union Farmer" to "U. S. Farm Union News", defendant, Fred W. Stover, as President of defendants, Iowa Farmers Union and Iowa Union Farmer Ass'n., has conducted the affairs of both of said corporations since the entry of said decree the same as he did prior thereto. There can be no reasonable doubt or question that defendant, Fred W. Stover, violated the injunction herein. He is guilty of contempt and is subject to penalty therefor.

Conclusions of Law:

1. As above stated, Judge Harper found that defendants were infringing plaintiff's registered marks and enjoined them from further infringement thereof. Except for the change of the name of the defendants' newspaper from "Iowa Union Farmer" to "U. S. Farm Union News", defendants, including and under supervision of the defendant, Fred W. Stover, have continued their operations since the entry of the injunction the same as they had prior thereto. There has been no substantial effort to comply with the injunction. Obviously, defendant, Fred W.

Stover, continued to do that which he was enjoined from doing. He is guilty of contempt and is subject to penalty.

2. The name of a newspaper is in the nature of a trade mark. The law of trade names is identical with that of trade marks. Rights that may accrue in a trade name are by reason of the fact that such trade name becomes in law a trade mark. While a trade name is now strictly a trade mark, it is generally governed as to its use by the same rules as a trade mark.

3. Plaintiff has registered its marks, "Union Farmer" and "Farmers Union". Judge Harper's findings and conclusions adjudicated that defendants' use of the trade name, "Iowa Farmers Union", infringed plaintiff's registered mark, "Farmers Union" and that defendants' use of the trade name "Iowa Union Farmer Association" infringed plaintiff's registered mark "Union Farmer". The adjudications thus made are not subject to collateral attack in these proceedings. Defendant, Fred W. Stover, President of the Iowa Farmers Union, and as president of the Iowa Union Farmer Association, has done nothing whatever to terminate said infringements by said corporations. He is clearly guilty of contempt. In continuing to supervise and direct the activities of said corporations, defendant, Fred W. Stover, has clearly violated the injunction.

4. The change of the name of the newspaper from "Iowa Union Farmer" to "U. S. Farm Union News" does not avoid infringement of plaintiff's registered marks. The confusion which has existed heretofore is bound to continue and to reoccur because of the similarity of the name to plaintiff's marks, particularly when the type of subscribers to defendants' newspaper and to plaintiff's newspapers is considered.

5. Defendant, Fred W. Stover, should pay to the Clerk of this Court a fine of One Thousand Dollars ($1,000.00); provided, however, that, if, within ten days after the entry of judgment herein, he procures the discontinuance of the corporate names, Iowa Farmers Union and Iowa Union Farmer Association, procures the discontinuance of the

name, U. S. Farm Union News, and of the reference to the fact that it was formerly Iowa Union Farmer, procures the removal of the sign, "Iowa Farmers Union", over the entrance to the place of business of said corporation, ceases to solicit funds, contributions and dues for either an Iowa Farmers Union or an Iowa Union Farmer Association, and otherwise complies with the injunction herein, then said fine shall be reduced to Five Hundred Dollars ($500.00).

Order for Judgment.

Pursuant to the foregoing,

It Is Ordered that the Clerk of this Court enter of record herein the following:

Judgment and Decree.

Be It Remembered that on this ____ day of April, 1957, this cause came on for the entry of Judgment and Decree pursuant to the Findings of Fact and Conclusions of Law, filed herein this date, which Findings of Fact and Conclusions of Law are incorporated herein by reference as fully as though repeated at length herein, and, in accordance therewith,

It Is Hereby Ordered, Adjudged and Decreed that the defendant, Fred W. Stover, is found to be in Contempt of Court for violation of the injunction entered in this cause on June 11, 1956, and accordingly is Ordered to forthwith pay to the Clerk of this Court a fine of One Thousand Dollars ($1,000.00), provided, however, that, if, within ten days after the entry of this judgment herein, he procures the discontinuance of the corporate names, Iowa Farmers Union and Iowa Union Farmer Association, procures the discontinuance of the name, U. S. Farm Union News, and of the reference to the fact that it was formerly Iowa Union Farmer, procures the removal of the sign, "Iowa Farmers Union", over the entrance to the place of business of said corporation, ceases to solicit funds, contributions and dues for either an Iowa Farmers Union or an Iowa Union Farmer Association, and otherwise complies with

the injunction herein, then said fine shall be reduced to Five Hundred Dollars ($500.00).

It Is Further Ordered that Judgment be entered against the defendant, Fred W. Stover, for the costs of this proceeding.

(Memorandum Opinion on Objections to Findings of Fact, Conclusions of Law, and Judgment in Above Case.)

(Filed in United States District Court on April 25, 1957.)

The contemnor, through his counsel, makes sundry objections to the proposed findings of fact and conclusions of law, and judgment in the above case.

An examination of the proposed findings and conclusions of law, as well as the judgment, shows that the memorandum opinion heretofore filed was followed.

Able counsel for the contemnor challenges the right of the court to impose a fine in what he designates or claims to be purely a civil contempt. Because of decisions of the Supreme Court on the subject of contempt, and because of the efforts of the Congress to legislate so as to restrain violations of the criminal law, the Congress enacted Sections 401 and 402, Title 18 U. S. C. A. These sections were placed in the statutes enumerating and providing punishments for crimes. It was specifically provided in Section 401 among other things, that:

> "A Court of the United States shall have power to punish by fine or imprisonment, at its discretion, (emphasis mine) such contempt of its authority, and none other, as—
>
> * * *
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

Quite clearly, the contemnor in this case was charged with disobedience to a lawful decree heretofore entered in a proceeding in which the contemnor was a party.

It has been said that the nature of the relief sought determines whether a contempt proceeding is civil or criminal. Penfield Co. of Cal. v. Securities and Exchange Commission, 330 U. S. 585.

The courts have been greatly confused in endeavoring to distinguish between civil and criminal contempt. There are many cases so purely civil in their nature as to take away any admixture of criminal contempt. This is not such a case. Moreover, the Congress, by the above enactment, endeavored to clarify the question.

In view of the above, the objections to the entry of judgment, and the making of findings of fact and statement of conclusions of law, as requested by the plaintiff, will be overruled.

Kansas City, Missouri, April 23, 1957

s/ Albert L. Reeves,

U. S. District Judge.

Order Overruling Objection to Findings of Fact, Conclusions of Law and Judgment.

Filed in United States District Court on April 25, 1957.

The objections of the contemnor, through his attorney, to the findings of fact, conclusions of law and judgment, as proposed by plaintiff, having been examined, and it appearing that such findings of fact, conclusions of law and judgment accord with the pleadings and the evidence,

It Is Therefore Ordered and Adjudged that said objections be and the same hereby are overruled.

Kansas City, Missouri, April 23, 1957

Albert L. Reeves,

U. S. District Judge,

(By assignment.)

(Notice of Appeal.)

(Filed in United States District Court on May 4, 1957.)

Notice is hereby given that the defendant, Fred W. Stover, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the final judgment entered in this action in a contempt proceeding against said defendant on April 25, 1957.

/s/ J. R. McManus,
417 Fleming Building,
Des Moines, Iowa,
Attorney for Defendant-Appellant, Fred W. Stover.

(Supersedeas Bond.)

(Filed in United States District Court on May 6, 1957.)

Know All Men by These Presents, that I, Fred W. Stover, as principal, am held and firmly bound unto Farmers' Educational and Co-operative Union of America, a corporation, plaintiff in the above entitled cause, and the United States of America in the full and just sum of Twelve Hundred Fifty Dollars ($1250), to be paid to the said Farmers' Educational and Co-operative Union of America, a corporation, and the United States of America, their successors and assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors and administrator by these presents, and I am depositing herewith the sum of Twelve Hundred Fifty Dollars ($1250) as surety for the fulfillment of this obligation with the Clerk of the United States District Court for the Southern District of Iowa at the time of the filing of this bond.

Whereas, on the 25th day of April, 1957, in an action pending in the United States District Court for the Southern District of Iowa between Farmers' Educational and Co-operative Union of America, a corporation, plaintiff, vs. Iowa Farmers Union et al., defendants, Findings of Fact,

Conclusions of Law, Judgment and Decree was filed and entered of record in a contempt proceeding brought by plaintiff against the defendant, Fred W. Stover, finding the said defendant guilty of contempt for the violation of the decree which was entered in the principal cause on June 11, 1956, and imposing a fine against said defendant, Fred W. Stover, and the said Fred W. Stover having filed a Notice of Appeal from such judgment and decree made April 25, 1957, to the United States Court of Appeals for the Eighth Circuit, said notice being filed on May 4, 1957, in the office of the Clerk of said court;

Now, Therefore, the condition of this obligation is such, that if the said defendant, Fred W. Stover, shall prosecute his appeal to effect and shall satisfy the judgment in full, together with costs, interests and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed or shall satisfy in full such modification of the judgment, and such costs, interests, and damages as the said United States Court of Appeals for the Eighth Circuit may adjudge and award, then this obligation to be void; otherwise, to remain in full force and effect.

In Witness Whereof, I have hereunto set my hand on this 6th day of May, 1957.

/s/ Fred W. Stover,
Defendant

(Order Granting Supersedeas and Approving Bond.)

(Filed in United States District Court on May 6, 1957.)

Upon this 6th day of May, 1957, there was presented to the undersigned a supersedeas bond tendered by Fred W. Stover, defendant in the above entitled cause, in the amount of Twelve Hundred Fifty Dollars ($1250) with cash as surety for the faithful performance of the obligations created by said bond and, at the same time, the said defendant made oral application for stay, pending the appeal of Fred W. Stover, defendant, to the United States

Court of Appeals for the Eighth Circuit from an order adjudging him to be in contempt, said order having been entered in this court on April 25, 1957, and it appearing to the court that the bond is in proper form and amount and with sufficient surety, and that said defendant is entitled to a stay of proceedings,

It Is, Therefore, Ordered that the execution of and any proceedings to enforce the judgment entered herein in the contempt proceedings mentioned on the 25th day of April, 1957, should be and they are hereby stayed, pending the determination of said defendant's appeal from such judgment so entered upon April 25, 1957, and the supersedeas bond tendered and filed by the said Fred W. Stover, which is mentioned above, is hereby approved by the court.

/s/ Henry Graven,
Judge by assignment.

(Designation of Record upon Appeal.)

(Filed in United States District Court September 18, 1957.)

Comes now Fred W. Stover, appellant, pursuant to Rule 8 (b) of the Rules of the United States Court of Appeals for the Eighth Circuit and Rule 75 (a) of the Federal Rules of Civil Procedure and designates the entire record, proceedings, exhibits and evidence in the above entitled proceeding to be contained in the Record on appeal in connection with the appeal, the notice of which was filed herein on May 4, 1957, on behalf of the appellant, Fred W. Stover.

/s/ James R. McManus,
417 Fleming Building,
Des Moines, Iowa,
Attorney for Appellant,
Fred W. Stover.

(The Exhibits.)

The exhibits in this case consist of the Record on the original appeal, photostatic copies of registered trade marks, briefs, letterheads, photographs, newspapers and other printed matter, all of which would be rather bulky and require a good deal of space if included in the printed Record. The Exhibits will be transmitted to the court either under stipulation or order as their reproduction would be difficult and unduly expensive. In one way or another the original exhibits will be transmitted to the clerk of this court. The following constitutes a complete list of said exhibits with exhibit numbers and a brief statement describing the nature of the exhibit.

List of Exhibits.

Plaintiffs'

1. Printed record upon original trial of injunction suit.
2. U. S. Farm Union News (May-June issue—a newspaper).
3. U. S. Farm Union News (a newspaper).
4. U. S. Farm Union News (a newspaper).
5. U. S. Farm Union News (a newspaper).
6. Photograph showing sign reading "Iowa Farmers Union at 517 Keo Way.
7. Stationery letterhead Iowa Farmers Union.
8. Stationery letterhead Iowa Farmers Union.
9. Circular.

Defendants'

A. Memorandum for Trial Brief accompanying filing of original complaint.

B. Copy plaintiffs' brief and argument filed with Judge Harper.

C. April, 1955, issue of Iowa Union Farmer (a newspaper).

E Letterhead of National Farmers Union.

F Issue of National Union Farmer (a newspaper).

G Issue of National Union Farmer (a newspaper).

H Paper containing dictionary definition of words "trade mark" and "trade name".

(List of Relevant Docket Entries Pertinent to This Appeal.)

1956	
September 10	Filed Pltff's Application for Citation for Contempt of Court of Fred W. Stover.
December 10	Filed Pltff's Amendment to Application for Citation for Contempt of Court of Fred W. Stover.
December 10	Filed Order Granting Application to Show Cause. Reeves, J.
1957	
January 3	Filed Order Granting Application to Show Cause, with Mar.'s return of service on Fred W. Stover personally by handing a copy of same to him at 517 Keo Way, Des Moines, Iowa, at 9:45 A.M., on December 26, 1956. Roland A. Walter, U. S. Mar. by /s/ Jack T. Pitt, Deputy.
January 23	Entered evidence for plaintiff concluded; counsel for defendant moves to dismiss; evidence for defendant, Fred W. Stover, concluded; counsel for defendant renews motion to dismiss; counsel for plaintiff given until February 11, 1957, to file brief; counsel for defendant given until February 25, 1957, to file brief; counsel for plaintiff given until March 7, 1957, to file brief; case will be submitted and taken under advisement when all briefs filed. Reeves, J.
February 4	Filed court's copy of transcript of proceedings on contempt citation.

March 11 — Filed Pltff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9; and defendant's Exhibits A, B, D, E, F, G, H, I-1 and I-3 (re-contempt hearing held January 28, 1957).

March 28 — Filed Memorandum Opinion on Question of Contempt and Citation Against Fred W. Stover. Reeves, J. Notice to Attys. 3-29-57. (Pltff's Counsel to prepare Order in Compliance therewith).

April 25 — Filed Findings of Fact, Conclusions of Law, Judgment and Decree. Reeves, J. (7 OJ 69) Notice to Attys. 4-25-57.

April 25 — Entered deft. Fred W. Stover found to be in contempt of Court for violation of injunction entered in this cause on June 11, 1956, and ordered to pay fine of $1000.00, provided, however, if within 10 days after entry of this judgment he procures the discontinuance of the corporate names, Iowa Farmers Union and Iowa Union Farmer Association, procures the discontinuance of the name, U. S. Farm Union News, and of reference to the fact that it was formerly Iowa Union Farmer, procures the removal of the sign, "Iowa Farmers Union", over the entrance to the place of business of said corporation, ceases to solicit funds, contributions and dues for either an Iowa Farmers Union or an Iowa Union Farmer Association, and otherwise complies with the injunction herein, then said fine shall be reduced to $500.00; Deft. Fred W. Stover to pay costs of this proceeding. Reeves, J. (7 OJ 69).

April 25 — Filed Memorandum Opinion on Objections to Findings of Fact, Conclusions of Law, and Judgment. Reeves, J. Notice to Attys. 4-25-57.

April 25 — Filed Order Overruling Objections to Findings of Fact, Conclusions of Law and Judgment. Reeves, J. (7 OJ 70) Notice to Attys. 4-25-57.

May 4	Filed Fred W. Stover, Deft-Appellant, Notice of Appeal. Des Moines, Iowa, May 4, 1957. Copy of Notice of Appeal mailed to Brody, Parker, Miller, Roberts & Thoma, 400 Empire Building, Des Moines, Iowa, and Charles E. Brannan, Equitable Building, Denver, Colorado, Attys. for Pltff. E. E. Poston, Clerk, by /s/ Esther Lyons, Deputy Clerk.
May 6	Filed Order Granting Supersedeas and Approving Bond. Graven, J. (7 OJ 84) Notice to Attys. 5-8-57.
May 6	Filed Supersedeas Bond—Fred W. Stover, Principal.